

The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2013-08 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-NYSE-2013-08. 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 10:00 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 publicly available. All submissions should refer to File Number SR-NYSE-2013-08 and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-02290 Filed 2-1-13; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-68752; File No. SR-BATS-2013-003]**

**Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rules in Connection With the Elimination of Discretionary Orders for BATS Options**

January 29, 2013.

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 January 18, 2013, BATS Exchange, Inc. (the "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 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 is proposing to amend BATS Rule 21.1, entitled "Definitions," to remove an order type, a Discretionary Order, from the types of orders allowed by the BATS options market ("BATS Options").

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 Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of the proposed rule change is to amend BATS Rule 21.1 to remove Discretionary Orders from the types of orders allowed by BATS Options.

As currently offered, Discretionary Orders allow Exchange Users<sup>5</sup> to enter orders that have a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The Exchange adopted the Discretionary Order order type for BATS Options based on

<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 BATS Rule 1.5(cc), the term "User" means "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to BATS Rule 11.3."

<sup>8</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.

experience with an identical order type offered on the Exchange's cash equities platform. Although the Exchange believed that Discretionary Orders would translate well to BATS Options, Discretionary Orders have not been widely used on BATS Options; to the extent Discretionary Orders have been used on BATS Options, BATS has observed that it does not appear that the Discretionary Order order type incentivizes Exchange Users to enter aggressively priced, displayed liquidity that effectively contributes to the price discovery process. Accordingly, the Exchange proposes to remove the ability to submit a Discretionary Order to BATS Options, and thus, to delete reference to Discretionary Orders in Rule 21.1. The Exchange does not propose any difference to the existing discretionary functionality for the Exchange's cash equities trading platform.

## 2. Statutory Basis

The rule change proposed in this submission 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>6</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</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, and, in general, protect investors and the public interest. Specifically, the Exchange believes that elimination of Discretionary Orders for BATS Options will enhance price discovery and aggressively priced, displayed liquidity on BATS Options, which will have potential benefits for all market participants.

### *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. As noted above, the proposal would eliminate an order type that is not offered by any other options 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 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay because the Exchange plans to stop supporting the Discretionary Order order type as of February 1, 2013. Furthermore, the Exchange notes that the Discretionary Order order type is not widely used on the BATS Options market and, as such, the Exchange does not believe that discontinuing its availability would negatively affect Exchange Users or the Exchange's market. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>12</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.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 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, 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.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

## 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-2013-003 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-2013-003. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will 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-2013-003 and should be submitted on or before February 25, 2013.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-02298 Filed 2-1-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68758; File No. SR-NYSEArca-2013-04]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Revise Qualification Thresholds for Tiered Customer Posting Credits

January 29, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 15, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule") to revise the qualification thresholds for tiered Customer posting credits for electronic executions in Penny Pilot issues. The Exchange proposes to make the fee change operative on February 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 amend the Fee Schedule to revise the qualification thresholds for tiered Customer<sup>4</sup> posting credits for electronic executions in Penny Pilot issues.<sup>5</sup> The Exchange proposes to make the fee change operative on February 1, 2013.

Currently, the Exchange provides credits for posted electronic Customer executions in Penny Pilot issues for OTP Holders and OTP Firms that meet the following execution thresholds:

Tier	Qualification basis (average electronic executions per day)			Credit applied to posted electronic customer executions in Penny Pilot issues
Base .....	.....	.....	.....	(\$0.25)
Tier 1 .....	15,000 Contracts from Customer Posted Orders in Penny Pilot Issues.	.....	.....	(\$0.38)
Tier 2 .....	25,000 Contracts from Customer Posted Orders in Penny Pilot Issues, or	75,000 Contracts from Posted Orders in Penny Pilot Issues, all account types.*	.....	(\$0.40)
Tier 3 .....	50,000 Contracts from Customer Posted Orders in Penny Pilot Issues.	.....	.....	(\$0.43)
Tier 4 .....	65,000 Contracts from Customer Posted Orders in Penny Pilot Issues Plus 0.3% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market,* or	100,000 Contracts from Posted Orders in Penny Pilot Issues, all account types,* or	100,000 Contracts from Customer Posted and Removing Orders in Penny Pilot Issues.	(\$0.44)

\* Includes transaction volume from the OTP Holder's or OTP Firm's affiliates.

The Exchange proposes to revise the qualification thresholds for tiered Customer posting credits for electronic executions in Penny Pilot issues so that the qualification thresholds for tiered

Customer posting credits will be based not on a fixed number of contracts but instead on a percentage of average daily volume ("ADV") of Customer electronic equity and ETF option contracts

executed by an OTP Holder or OTP Firm on the Exchange relative to the overall Total Industry Customer equity and ETF option ADV.<sup>6</sup> The Exchange

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Under NYSE Arca Options Rule 6.1(b)(29), the term "Customer" has the same definition as Rule 15c3-1(c)(6) under the Act, which excludes certain broker-dealers.

<sup>5</sup> As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved

to trade with a minimum price variation of \$0.01 as part of a pilot program that is currently scheduled to expire on March 31, 2013. See Securities Exchange Act Release No. 68426, (December 13, 2012) 77 FR 75224 (December 19, 2012) (SR-NYSEArca-2012-135).

<sup>6</sup> The OCC provides volume information in two product categories: Equity and ETF volume and index volume, and the information can be filtered to show only Customer, firm, or market maker account type. Equity and ETF Customer volume

numbers are available directly from the OCC each morning, or may be transmitted, upon request, free of charge from the Exchange. Equity and ETF Customer volume is a widely followed benchmark of industry volume and is indicative of industry market share. Total Industry Customer equity and ETF option ADV is comprised of those equity and ETF option contracts that clear in the customer account type at OCC, including Exchange-Traded Fund Shares, Trust Issued Receipts, Partnership