

In addition, the Commission believes that the proposed rule change would not increase, and could decrease, the burden parties incur in panel selection. FINRA would continue to send the parties the same three lists of arbitrators. While the parties could choose to continue to review all three lists, they could also choose to strike all of the non-public arbitrators and only review the remaining two lists.

We appreciate the concerns of some commenters, and recognize that some customers may want to empanel a non-public arbitrator in a particular matter. Therefore, we are requesting FINRA to gather statistics for a period of one year from the effective date of this rule change and report to the Commission on the number of cases in which a customer ranking a non-public arbitrator nonetheless receives an all public panel.

For the reasons stated above, the Commission finds that the rule change is consistent with the Exchange Act and the rules and regulations thereunder.

## V. Conclusion

*It is therefore ordered*, pursuant to Exchange Act Section 19(b)(2),<sup>30</sup> that the proposed rule change (SR-FINRA-2013-023) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70441; File No. SR-BATS-2013-050]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate References to Obsolete Functionality

September 18, 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 September 12, 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to eliminate reference to a Market Maker order functionality in Rule 11.8(e) that has now been retired by the Exchange. The Exchange is also proposing to eliminate reference to BATS' TCP FAST PITCH, which is a data product that has also been discontinued by the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.bats trading.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

Proposed Change to Rule 11.8

##### Background

On August 29, 2012, the Commission approved the Exchange's proposed rule change to adopt a new Market Maker Peg Order functionality that was designed to replace the automated functionality (commonly referred to as the Market Maker Quoter) provided to Market Makers in Rule 11.8(e).<sup>5</sup> The Exchange originally adopted Rule

11.8(e) as part of an effort to address issues uncovered by the aberrant trading that occurred on May 6, 2010.<sup>6</sup> The Market Maker Quoter functionality was designed to help Market Makers meet the enhanced obligations imposed on them post May 6, 2010<sup>7</sup> and avoid execution of Market Maker "stub quotes" in instances of aberrant trading.<sup>8</sup> Although the Market Maker Quoter was successful in allowing Exchange Market Makers to meet their enhanced obligations and in avoiding the deleterious effect on the markets caused by "stub quote" executions, the functionality presented difficulties to Market Makers in meeting their obligations under Rule 15c3-5 under the Act (the "Market Access Rule")<sup>9</sup> and Regulation SHO.<sup>10</sup>

The Exchange introduced the Market Maker Peg Order to simplify Market Maker compliance with the requirements of the Market Access Rule and Regulation SHO. The Market Maker Peg Order allows Market Makers to control the origination of their orders, as required by the Market Access Rule, while also allowing Market Makers to make marking and locate determinations prior to order entry, as required by Regulation SHO. As such, Market Makers are fully able to comply with the requirements of the Market Access Rule and Regulation SHO, as they would when placing any order,

<sup>6</sup> Securities Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR-BATS-2010-025).

<sup>7</sup> *Id.*

<sup>8</sup> For each issue in which a market maker was registered, the Market Maker Quoter functionality optionally created a quotation for display to comply with market making obligations. Compliant displayed quotations were thereafter allowed to rest and were not adjusted unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, either: (a) Shrank to a specified number of percentage points away from the Designated Percentage towards the then current national best bid or national best offer, which number of percentage points was determined and published in a circular distributed to Members from time to time; or (b) expanded to within 0.5% of the applicable percentage necessary to trigger an individual stock trading pause, whereupon such bid or offer was cancelled and re-entered at the Designated Percentage away from the then current national best bid and national best offer, or if no national best bid or national best offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor. Quotations independently entered by market makers were allowed to move freely towards the national best bid or national best offer, as appropriate, for potential execution. In the event of an execution against a quote generated pursuant to the Market Maker Quoter functionality, the Market Maker's quote was refreshed on the executed side of the market at the applicable Designated Percentage away from the then national best bid (offer), or if no national best bid (offer), the last reported sale. See Rule 11.8(e).

<sup>9</sup> 17 CFR 240.15c3-5.

<sup>10</sup> 17 CFR 242.200-242.204.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</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.

<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> Securities Exchange Act Release No. 67756 (Aug. 29, 2012), 77 FR 54633 (Sept. 5, 2012) (SR-BATS-2012-026).

while also meeting their Exchange market making obligations.

#### Retirement of the Market Maker Quoter

At the time of Market Maker Peg Order rule filing and in the subsequent filing to amend the Market Maker Peg Order, the Exchange noted its intention to continue offering the Market Maker Quoter functionality for a three-month period after the implementation of the Market Maker Peg Order to afford Market Makers the opportunity to gradually transition away from the previous functionality.<sup>11</sup> Accordingly, the Exchange did not believe it appropriate to eliminate the language authorizing the Market Maker Quoter functionality immediately upon the Market Maker Peg Order's effectiveness. However, as of June 24, 2013, the Exchange decommissioned the Market Maker Quoter functionality pursuant to its transition plan. Thus, the Exchange is now proposing to delete Rule 11.8(e), which authorizes the functionality, and hold the rule number in reserve.

#### Proposed Change to Rule 11.22

The Exchange is also proposing to delete reference to TCP FAST PITCH in Rule 11.22(b) because, as is made clear in the rule text of Rule 11.22, this data product was discontinued on August 1, 2011. Therefore, reference to the product within Exchange rules no longer serves any legitimate purpose.

#### 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>12</sup> Specifically, the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> 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 that the proposed rule changes fulfill these requirements because they delete references to a functionality and a data product that are now retired, thereby eliminating any investor uncertainty related to the status of this functionality and data product.

<sup>11</sup> See Securities Exchange Act Release No. 67381 (July 10, 2012), 77 FR 41829, 41843 (July 16, 2012) (SR-BATS-2012-026); Securities Exchange Act Release No. 69310 (Apr. 4, 2013), 78 FR 21447 (Apr. 10, 2013) (SR-BATS-2013-022).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

Moreover, in relation to the elimination of references to the Market Maker Quoter functionality and as noted in the Exchange's Market Maker Peg Order filing, the transition period during which both the Market Maker Quoter functionality and the Market Maker Peg Order were operational was designed to minimize the potential market impact caused by the implementation of the new order type.<sup>14</sup> The Exchange believes that deleting reference to the Market Maker Quoter functionality is now appropriate and in furtherance of the public interest given the passage of time since the Market Maker Peg Order became effective and the Market Maker Quoter was decommissioned.<sup>15</sup>

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

BATS believes the proposal is consistent with Section 6(b)(8) of the Act<sup>16</sup> 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 proposed rule changes will remove references to a functionality and a data product that have already been retired. Moreover, with regard to deletion of references to the Market Maker Quoter, the Exchange does not believe removing reference to the retired functionality will have any impact on the current competitive environment given the fact that the Market Maker Quoter's replacement, the Market Maker Peg Order, has been effective and operational for many months. The Exchange also notes that deletion of the reference to TCP FAST PITCH will align BATS Exchange Rules with BATS Y-Exchange Rules as the related provision in the BATS Y-Exchange Rule Book has already been deleted.<sup>17</sup> Therefore, the Exchange does not believe these changes will have any effect 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.

<sup>14</sup> See Securities Exchange Act Release No. 67381 (July 10, 2012), 77 FR 41829 (July 16, 2012) (SR-BATS-2012-026).

<sup>15</sup> See *id.*; see also Securities Exchange Act Release No. 69310 (Apr. 4, 2013), 78 FR 21447 (Apr. 10, 2013) (SR-BATS-2013-022).

<sup>16</sup> 15 U.S.C. 78f(b)(8).

<sup>17</sup> See Securities Exchange Act Release No. 69891 (June 28, 2013), 78 FR 40529 (July 5, 2013) (SR-BYX-2013-022).

#### 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will allow the Exchange to quickly remove language in its rules that is not supported by any functionality on the Exchange. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as doing so will allow the Exchange's rule text to reflect the its existing functionality, thereby helping to avoid any potential investor confusion. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>20</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:

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</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 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>20</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

*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-2013-050 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-2013-050. 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 at 100 F Street NE., Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2013-050, and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70445; File No. SR-NYSEMKT-2013-75]

**Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a One-Day Temporary Suspension of Those Aspects of Rules 36.20—Equities and 36.21—Equities That Would Not Permit Floor Brokers to Use Personal Portable Phone Devices on the Trading Floor Due to the Unavailability of Exchange-Provided Cell Phones on September 11, 2013**

September 18, 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 September 12, 2013, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 Substance of the Proposed Rule Change**

The Exchange proposes a one-day temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor due to the unavailability of Exchange-provided cell phones on September 11, 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 temporarily suspend on September 11, 2013 those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor.<sup>4</sup> As proposed, all other aspects of Rule 36—Equities remain applicable and the temporary suspensions of the applicable Rule 36—Equities requirements are in effect only for September 11, 2013.<sup>5</sup>

On September 11, 2013, the third-party carrier that provides service for the Exchange-provided cell phones experienced an issue that affected Exchange authorized and provided portable phones for Floor brokers. This outage only impacted the service for Exchange authorized and provided portable phones. As a result, all Exchange authorized and provided cell phones were non-operational before the opening of trading on September 11, 2013. The issue was resolved before the close of trading on September 11, 2013.

Rules 36.20—Equities and 36.21—Equities govern the type of telephone communications that are approved for Floor brokers. Pursuant to Rule 36.20—Equities, Floor brokers may maintain a telephone line on the Trading Floor and use Exchange authorized and provided portable phones while on the Trading Floor. The use of such Exchange authorized and provided portable phones is governed by Rule 36.21—Equities. Because of the issues with the third-party carrier, all Exchange authorized and provided portable phones are not functional and therefore Floor brokers cannot use the Exchange authorized and provided portable phones. However, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when Exchange-provided cell phones are non-

<sup>4</sup> Pursuant to Rule 6A—Equities, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities.

<sup>5</sup> The Exchange provided Floor brokers with notice of this rule filing, including the applicable recordkeeping and other requirements related to using personal cell phones during the temporary suspension of Rule 36.

<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>21</sup> 17 CFR 200.30-3(a)(12).