

would allow the pilot to continue to operate without interruption until implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same trading pause requirements specified in the Plan. Thus, the proposed changes will not impose any burden on competition while providing trading pause requirements specified in the Plan.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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 prior to 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 interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹¹ the Commission may 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 so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is

consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.¹²

At any time within 60 days of the filing of such 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. Please include File Number SR-NYSEARCA-2013-02 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-NYSEARCA-2013-02. 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 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 publicly available. All submissions should refer to File Number SR-NYSEARCA-2013-02 and should be submitted on or before February 25, 2013.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68747; File No. SR-NYSE-2013-08]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the Attestation Requirement of Rule 107C To Allow a Retail Member Organization To Attest That "Substantially All" Orders Submitted To The Retail Liquidity Program Will Qualify As "Retail Orders"

January 28, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on January 17, 2012, New York Stock Exchange LLC ("NYSE" or "Exchange") 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 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 to amend the attestation requirement of Rule 107C to

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's 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.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² 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).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

allow a Retail Member Organization (“RMO”) to attest that “substantially all” orders submitted to the Retail Liquidity Program (the “Program”) will qualify as “Retail Orders.” Rule 107C(b)(2)(C) currently requires RMOs to attest that “any order” will so qualify, effectively preventing certain significant retail brokers from participating in the Program due to operational constraints. The text of the proposed rule change is available on the Exchange’s Web site at 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 is proposing an amendment to Rule 107C to provide that an RMO may attest that “substantially all” of the orders it submits to the Program are Retail Orders, as defined in Rule 107C, replacing the requirement that the RMO must attest that all submitted orders qualify as Retail Orders.

Under current Rule 107C(b)(2), a member organization wishing to become an RMO must submit: (A) An application form; (B) supporting documentation; and (C) an attestation that “any order” submitted as a Retail Order will qualify as such under Rule 107C.⁴

The Exchange believes that the categorical nature of the current attestation language is preventing certain member organizations with retail customers from participating in the Program. In particular, the Exchange

understands that some member organizations wishing to participate in the Program represent both “Retail Orders,” as defined in Rule 107C(a)(3), as well as other agency flow that may not meet the strict definition of “Retail Order.” The Exchange further understands that limitations in order management systems and routing networks used by such member organizations may make it infeasible for them to isolate 100% of Retail Orders from other agency, non-Retail Order flow that they would direct to the Program. Unable to make the categorical attestation required by the current language of Rule 107C, some member organizations have chosen not to participate, notwithstanding that substantially all order flow from such member organizations would be Retail Orders. This limitation has the effect of preventing their retail customers from benefiting from the enhanced price competition and transparency of the Program.

Accordingly, the Exchange is proposing a de minimis relaxation of the RMO attestation requirement in order to accommodate these system limitations and expand the access of retail customers to the benefits of the Program.

Specifically, as proposed an RMO would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under existing definitions of the Program.

The Exchange will issue a Trader Notice to make clear that the “substantially all” language is meant to permit the presence of only isolated and de minimis quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to systems limitations. In this regard, an RMO would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.⁵

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁶ in general, and furthers the

objectives of Section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the RMO applicant to attest that “substantially all” of its orders will qualify as Retail Orders. The slight relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted to the Program would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated member organizations who have only slight differences in the capability of their systems will be able to equally benefit from the Program.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow member organizations, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still participate in the Program. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the price improvement and transparency offered by the Program and thereby potentially stimulate further price competition for retail orders.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the amendment, by increasing the level of participation in the program, will increase the level of competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements.

⁴ A Retail Order is defined in Rule 107C(a)(3) as “an agency order that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.”

⁵ The Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will review a member organization’s compliance with these requirements.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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. 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.⁸

Kevin M. O'Neill,
Deputy Secretary.

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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"),¹ and Rule 19b-4 thereunder,² 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 Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ 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 Users⁵ 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

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ 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."

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.