

The Exchange also believes that this change will help to protect all investors from executions at prices that are not based on a reliable benchmark for the price of an option during times of significant volatility, and thus, believes the proposal to be consistent with the protection of investors and the public interest.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that other options exchanges are proposing to modify a market maker's quoting obligations when the underlying security is subject to a Limit State or Straddle State in connection with the Limit Up-Limit Down Plan consistent with the Exchange's handling proposed by this filing.

#### *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 comments on 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 such 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

No. SR-BOX-2013-13 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 No. SR-BOX-2013-13. 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 available publicly. All submissions should refer to File No. SR-BOX-2013-13 and should be submitted on or before April 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>3</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69121; File No. SR-BATS-2013-014]

### **Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Operation of Market Orders for BATS Options**

March 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2013, BATS Exchange, Inc. ("BATS" or "Exchange") 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 filed a proposal for the BATS Options Market ("BATS Options") to amend Rule 21.1 in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or "Plan").<sup>5</sup>

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

<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> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

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

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 Exchange currently allows the entry of market orders, which are orders that are orders to buy or sell at the best price available at the time of execution ("Market Orders"). The purpose of this proposed rule change is to amend BATS Rule 21.1(d)(5) to reject Market Orders if they are received when the underlying security is subject to a "Limit State" or "Straddle State" as defined in the Up-Limit Down Plan.<sup>6</sup>

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan. Under the Plan, a Limit State will be declared if the national best offer equals the lower price band and does not cross the national best bid, or the national best bid equals the upper price band and does not cross the national best offer. A Straddle State is when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility. Accordingly, when the underlying security is in a Limit State or Straddle State, there will not be a reliable price for the security to serve as a benchmark for the price of the related option. In such a state, the Exchange does not believe that it should permit the execution of Market Orders, which are un-priced orders that execute at the best price available at the time the Exchange receives such orders. The Exchange believes that the rejection of Market Orders when the underlying security is subject to a Limit State or Straddle State will help to maintain a fair and efficient marketplace for the execution of options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

<sup>6</sup> The Exchange notes that it will verify whether the underlying security is in a Limit State or Straddle State immediately prior to executing any Market Order.

of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the rejection of options Market Orders when the underlying security is in a Limit State or Straddle State will help to prevent executions that might occur at prices that have not been reliably formed. The Exchange believes that this change will help to protect, in particular, retail investors from executions of un-priced orders during times of significant volatility, and thus, believes the proposal to be consistent with the protection of investors and the public interest.

*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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes other options exchanges are proposing to handle market orders subject to a Limit State or Straddle State in connection with the Limit Up-Limit Down Plan consistent with the Exchange's handling proposed by this filing.

*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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 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.

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.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>11</sup> to determine whether the proposed rule change should be approved or 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 No. SR-BATS-2013-014 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 No. SR-BATS-2013-014. 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

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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 available publicly. All submissions should refer to File No. SR-BATS-2013-014 and should be submitted on or before April 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69124; File Nos. SR-CBOE-2013-016; SR-ISE-2013-08]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; Order Granting Accelerated Approval of Proposed Rule Changes To Permit the Minimum Price Variation for Mini Options To Be the Same as Permitted for Standard Options on the Same Underlying Security

March 12, 2013.

#### I. Introduction

On January 31, 2013, Chicago Board Options Exchange, Incorporated ("CBOE") and on February 6, 2013, International Securities Exchange, LLC ("ISE," and together with CBOE, "Exchanges") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule changes to permit the minimum price variation for Mini Options to be the same as the minimum price variation for standard options on the same underlying

security. CBOE's proposed rule change was published for comment in the **Federal Register** on February 14, 2013,<sup>3</sup> and the Commission received three comment letters on the proposal.<sup>4</sup> On March 8, 2013, CBOE submitted a response letter.<sup>5</sup> ISE's proposed rule change was published for comment in the **Federal Register** on February 20, 2013,<sup>6</sup> and the Commission received one comment letter on the proposal.<sup>7</sup> The Commission is approving the Exchanges' proposals on an accelerated basis.

#### II. Description of the Proposed Rule Changes

CBOE and ISE currently have rules that provide for the listing and trading of options ("Mini Options") that deliver 10 physical shares of SPDR S&P 500 ("SPY"), Apple Inc. ("AAPL"), SPDR Gold Trust ("GLD"), Google Inc. ("GOOG"), and Amazon.com, Inc. ("AMZN").<sup>8</sup> The Exchanges now propose to amend their rules to provide that the minimum price variation for bids and offers for Mini Options be the same as the minimum price variation for standard options on the same underlying security.<sup>9</sup> For example, if standard options on a security participate in the Penny Pilot Program, Mini Options on the same underlying security would be quoted in the same minimum increments (*i.e.*, \$0.01 for series that are quoted at less than \$3 per

contract and \$0.05 for series that are quoted at \$3 per contract or greater, and \$0.01 for all SPY options series). Of the five securities on which Mini Options are permitted, SPY, AAPL, GLD, and AMZN participate in the Penny Pilot Program. As proposed, for Mini Options on AAPL, GLD, and AMZN, the minimum price variation would be \$0.01 for quotations in series that are quoted at less than \$3 per contract and \$0.05 for quotations in series that are quoted at \$3 per contract or greater.<sup>10</sup> For Mini Options on SPY, the minimum price variation would be \$0.01 for all quotations in all series.<sup>11</sup> Because GOOG does not participate in the Penny Pilot Program, the minimum price variation for Mini Options on GOOG would be \$0.05 for series that are quoted at less than \$3 per contract and \$0.10 for series that are quoted at \$3 per contract or greater.<sup>12</sup>

#### III. Discussion and Commission Findings

The Commission finds that the proposed rule changes filed by the Exchanges are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that permitting Mini Options on SPY, AAPL, GLD, GOOG, and AMZN to have the same minimum price variation as standard options on the same underlying securities, in the manner proposed by the Exchanges, is consistent with the Act.<sup>15</sup> In addition,

<sup>10</sup> See CBOE Rule 6.42(3) and ISE Rule 710, Supplementary Material .01.

<sup>11</sup> See CBOE Rule 6.42(3) and ISE Rule 710, Supplementary Material .01.

<sup>12</sup> See CBOE Rules 6.42(1) and (2) and ISE Rule 710(a).

<sup>13</sup> In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> Mini Options are currently limited to overlie SPY, AAPL, GLD, GOOG, and AMZN, and any expansion of the Mini Options program would require that a subsequent proposed rule change be submitted to the Commission. See CBOE Mini Options Notice, *supra* note 8, at n.4 and ISE Mini Options Order, *supra* note 8, at n.12. In addition,

<sup>12</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> See Securities Exchange Act Release No. 68873 (February 8, 2013), 78 FR 10671 ("CBOE Notice").

<sup>4</sup> See letters from David Schmuck, Director, Chief Regulatory Officer, LiquidPoint LLC, dated March 11, 2013 ("LiquidPoint Letter"); Ellen Greene, Vice President, Financial Services Operations, Securities Industry and Financial Markets Association ("SIFMA"), dated March 6, 2013 ("SIFMA Letter"); and Michael L. Sheedy, dated February 22, 2013 ("Sheedy Letter").

<sup>5</sup> See letter from Jenny Golding, Senior Attorney, Legal Division, CBOE, dated March 8, 2013 ("CBOE Response Letter").

<sup>6</sup> See Securities Exchange Act Release No. 68919 (February 13, 2013), 78 FR 11921 ("ISE Notice").

<sup>7</sup> See letter from Gary J. Sjostedt, Director, Order Routing Strategy, TD Ameritrade, Inc. ("TD Ameritrade"), dated January 30, 2013 ("TD Ameritrade Letter").

<sup>8</sup> See Securities Exchange Act Release Nos. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (SR-CBOE-2013-001) ("CBOE Mini Options Notice") and 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (SR-ISE-2012-58) ("ISE Mini Options Order").

<sup>9</sup> See CBOE Rule 5.5, Interpretation and Policy .22(d) and ISE Rule 504, Supplementary Material .13(d). While the Exchanges propose these minimum price variations for Mini Options, they are not proposing to include any Mini Option in the Penny Pilot Program. See CBOE Notice, *supra* note 3, at 10672 and ISE Notice, *supra* note 6, at 11922. As CBOE states, because Mini Options are a separate class from standard options on the same underlying security, Mini Options would have to qualify separately for entry into the Penny Pilot Program, which they do not, at least initially. See CBOE Notice, *supra* note 3, at 10672.