

(<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 offices of NYSE Arca. 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-NYSEArca-2013-32, and should be submitted on or before May 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69310; File No. SR-BATS-2013-022]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Market Maker Peg Order Functionality

April 4, 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 March 22, 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 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 amend the functionality of the Market Maker Peg Order to more closely resemble analogous order types offered by NASDAQ Stock Market LLC ("Nasdaq") and EDGX Exchange, Inc. ("EDGX")<sup>3</sup> and to make certain clarifying changes to the rule.

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 this proposed rule change is to amend BATS Rule 11.9(c)(16). Specifically, the Exchange proposes to: (1) Remove the option to allow Market Maker Peg Orders to be priced and executed during the Pre-Opening Session<sup>4</sup> and the After Hours Trading Session<sup>5</sup> and to cancel all Market Maker Peg Orders that are on the BATS Book<sup>6</sup> at the end of Regular Trading Hours; (2) remove the option for a Market Maker Peg Order to be automatically cancelled where there is no NBBO and the order is priced based

<sup>3</sup> The Exchange notes that EDGA Exchange, Inc. also has an order type identical to that of EDGX, however, for the purposes of this filing, the Exchange is referring only to the order type functionality available at EDGX.

<sup>4</sup> Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

<sup>5</sup> After Hours Trading Session means the time between 4:00 p.m. and 5:00 p.m. Eastern Time.

<sup>6</sup> BATS Book means the System's electronic file of orders.

on the last reported sale from the single plan processor; (3) remove the functionality that would allow a Market Maker to designate a more aggressive offset from the NBBO; (4) make clear that a Market Maker Peg Order will not peg to itself; and (5) make clear that only registered Market Makers are eligible to enter Market Maker Peg Orders. The Exchange is also proposing to reaffirm that it will continue to offer the present automated functionality provided to market makers under Rule 11.8(e) for a period of three months after the implementation of the Market Maker Peg Order.

##### Market Maker Peg Orders Entered Outside of Regular Trading Hours

The Exchange is proposing to amend BATS Rule 11.9(c)(16) to eliminate the option for Market Maker Peg Orders to be priced and executed outside of Regular Trading Hours and to cancel all Market Maker Peg Orders that are on the BATS Book at the end of Regular Trading Hours. As currently written, a Market Maker may enter a Market Maker Peg Order at any time during the Pre-Opening Session<sup>7</sup> or Regular Trading Hours, with an order entered during the Pre-Opening Session, by default, to remain unpriced and unexecutable until Regular Trading Hours, however, a Market Maker could designate that the order be priced and executable immediately upon entry during the Pre-Opening Session.

Specifically, the Exchange is proposing rule changes to eliminate the ability for a Market Maker to designate that an order be priced and executable immediately upon entry during the Pre-Opening Session, to state that all Market Maker Peg Orders that are on the BATS Book expire at the end of Regular Trading Hours, and to reject all Market Maker Peg Orders entered during the After Hours Trading Session. The Exchange is proposing these changes in order to make its Market Maker Peg Order functionality more closely resemble that of Market Maker Peg Orders at Nasdaq and EDGX. Because the Market Maker Peg Order is designed to help Market Makers meet their quoting obligation on the Exchange and the Exchange's quoting obligations do not include any obligations outside of Regular Trading Hours, the Exchange does not believe that allowing Market Maker Peg Orders to be priced and executed outside of Regular Trading Hours provides Market Makers with any benefit that would warrant the additional complexity that the

<sup>7</sup> The Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

<sup>17</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.

functionality would require. As such, the Exchange believes that eliminating the ability to have Market Maker Peg Orders price and execute outside of Regular Trading Hours will, in conjunction with the other changes proposed in this filing, act to simplify the Market Maker Peg Order type, thereby increasing its utility to Market Makers and decreasing the likelihood of unforeseen complications.

#### Pricing Market Maker Peg Orders to the Last Reported Sale

The Exchange is proposing to amend BATS Rule 11.9(c)(16) to eliminate the functionality that would allow a Market Maker to designate Market Maker Peg Orders to be cancelled where there is no NBBO and the order would otherwise be priced to the last reported sale from the single plan processor. Currently, a Market Maker may optionally designate that a Market Maker Peg Order be cancelled where it would be priced to the last reported sale from the single plan processor.

The Exchange is proposing to eliminate this functionality in order to make its Market Maker Peg Order functionality more closely resemble that of Market Maker Peg Orders at Nasdaq and EDGX. Additionally, the Exchange believes that removing the ability to designate that Market Maker Peg Orders be cancelled where the order would peg based on the last reported sale will, in conjunction with the other changes proposed in this filing, act to simplify the Market Maker Peg Order type, thereby increasing its utility to Market Makers and decreasing the likelihood of unforeseen complications.

#### Eliminating More Aggressive Offsets From the NBBO

The Exchange is proposing to amend BATS Rule 11.9(c)(16) in order to eliminate the functionality that would allow a Market Maker to designate a more aggressive offset from the NBBO than the Designated Percentage. As currently written, the rule allows a Market Maker to designate a more aggressive offset from the NBBO and a percentage away from the NBBO or the price of the last reported sale from the responsible single plan processor at which the order will be adjusted back to the Market Maker-designated offset.

The Exchange is proposing to eliminate this functionality in order to, as mentioned above, simplify the Market Maker Peg Order functionality. Market Makers will still be able to enter orders priced more aggressively than the automatically priced Market Maker Peg Orders and will have access to existing pegged order functionality. The

Exchange believes that this existing functionality will provide Market Makers with the necessary tools to enter orders priced more aggressively than the Market Maker Peg Order while not adding an additional level of complexity by requiring Market Makers to establish additional parameters for their Market Maker Peg Orders.

#### Preventing Market Maker Peg Orders From Pegging to Itself

The Exchange is proposing to amend BATS Rule 11.9(c)(16) in order to make clear that a Market Maker Peg Order will not use its own pegged price as the basis for adjusting the order's price. Where there is no NBBO and a Market Maker Peg Order, whether upon entry or already on the BATS Book, is pegged to the last reported sale from the single plan processor, the Market Maker Peg Order will be reported to the SIPs and will be disseminated to the Exchange as the NBBO. The Exchange is seeking to make clear that, in this situation, the Exchange will not reprice the order based on the fact that the Market Maker Peg Order is the NBBO. Rather, the Exchange will only adjust the market Maker Peg Order when there is either a new consolidated last sale or a new NBBO is established by a national securities exchange.

#### Restriction of Market Maker Peg Orders to Market Makers

The Exchange is proposing to amend BATS Rule 11.9(c)(16) in order to make clear that only a registered Market Maker can enter a Market Maker Peg Order. The Exchange believes that, as currently constructed, only a registered Market Maker is allowed to enter Market Maker Peg Orders under Rule 11.9(c)(16) despite lacking any explicit language stating as much. As discussed above, the order type was created to help Market Makers comply with their quoting requirements on the Exchange and, for that reason, the behaviors of the Market Maker Peg Order are based specifically on the Exchange's quoting requirements. The Exchange does not make the order type available to other market participants because it does not believe that there would be any demand for the order type or that it would be particularly useful for market participants that are not Market Makers, especially given the availability of more customizable peg orders.<sup>8</sup> In order to make it abundantly clear, however, the Exchange is proposing to amend the

<sup>8</sup> Including Primary Pegged Order, Market Pegged Order, Mid-Point Peg Order, and Alternative Mid-Point Peg Order [sic], as described in BATS Rules 11.9(c)(8) and (9).

rule to explicitly state that only registered Market Makers can enter Market Maker Peg Orders.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 eliminating the ability of Market Maker Peg Orders to be priced and executed outside of Regular Trading Hours and cancelling all Market Maker Peg Orders on the BATS Book at the end of Regular Trading Hours will result in a continuing benefit to market participants by simplifying the process of entering and cancelling Market Maker Peg Orders and including only the functionality necessary for Market Makers to meet their regulatory obligations. Additionally, the Exchange believes that the proposal will foster cooperation and coordination with processing information with respect to transactions in securities by preventing the Exchange from sending a potentially significantly larger than normal number of orders to the SIPs at the beginning of Regular Trading Hours when Market Maker Peg Orders entered during the Pre-Opening Session would be priced and become eligible for execution at exactly the same time. Similarly, the Exchange believes that eliminating the option to have a Market Maker Peg Order automatically cancel an order that would be priced based on the last reported sale from the single plan processor will result in a continuing benefit to market participants by simplifying the functionality and corresponding complexity of implementation of Market Maker Peg Orders. The Exchange also believes that removing the functionality that would allow a Market Maker to designate a more aggressive offset from the NBBO will result in a continuing benefit to market participants by further simplifying the functionality of Market Maker Peg Orders to include only the functionality necessary for Market Makers to meet their regulatory

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

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

obligations. The Exchange does not believe that removing this functionality will disincentivize Market Makers from posting more aggressive quotes. Rather, the Exchange believes that, similar to the market maker quoter, Market Makers will use the Market Maker Peg Order to satisfy the Exchange's quoting requirements, while continuing to enter and manage more aggressively priced orders using existing order types.

#### *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 proposed changes to the Market Maker Peg Order type functionality will further align the Exchange's functionality with that offered by certain other competing market centers. Specifically, the rule change proposed herein is based on Nasdaq Rule 4751(f)(15) and EDGX Rule 11.5(c)(15).<sup>11</sup> By adopting changes to functionality to align with functionality in place elsewhere, as well as simplifying such functionality, the Exchange believes that it is reducing the potential for confusion amongst market participants.

#### *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 significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

<sup>11</sup> See Securities Exchange Act Release Nos. 67203 (June 14, 2012), 77 FR 37086 (June 20, 2012) (SR NASDAQ-2012-066); 67959 (October 2, 2012), 77 FR 61449 (October 9, 2012) (SR-EDGX-2012-44); 68596 (January 7, 2013), 78 FR 2477 (January 11, 2013) (SR-EDGX-2012-49).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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,

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will allow the Exchange to make the improvements and clarifications to the Market Maker Peg Order effective immediately and address any technical or operative issues that member organizations may experience if the Exchange's implementation of Market Maker Peg Order is different from that of other exchanges.

Therefore, the Commission designates the proposal operative upon filing.<sup>14</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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>15</sup> of the Act 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 Number SR-BATS-2013-022 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-2013-022. This file number should be included on the

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>14</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).

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

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-2013-022 and should be submitted on or before May 1, 2013.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69297; File No. SR-FINRA-2013-003]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Customer and Industry Codes of Arbitration Procedure To Revise the Public Arbitrator Definition**

April 4, 2013.

#### **I. Introduction**

On January 4, 2012, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

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