

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 offices 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-CBOE-2013-091, and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70513; File No. SR-BATS-2013-053]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to the Clearly Erroneous Execution Rule

September 26, 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 24, 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 extend a pilot program related to Rule 11.17, entitled "Clearly Erroneous Executions." The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 11.17(c)(4). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<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 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 filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to remove references to individual stock trading pauses described in Rule 11.17(c)(4).

Portions of Rule 11.17, explained in further detail below, are currently operating as a pilot program set to

expire on September 30, 2013.<sup>6</sup> The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Commission approved, on a pilot basis, changes to BATS Rule 11.17 to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.<sup>7</sup> The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17,<sup>8</sup> and in 2013, adopted a provision designed to address the 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 the "Plan").<sup>9</sup> The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 11.17 to individual stock trading pauses issued by a primary listing market. Specifically, Rule 11.17(c)(4) provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there was an individual stock trading pause issued for that security and the security is included in the S&P 500® Index, the Russell 1000® Index, or a pilot list of Exchange Traded Products ("Subject Securities"). The stock trading pauses described in Rule 11.17(c)(4) are being phased out as securities become subject

<sup>6</sup> See Securities Exchange Act Release No. 68797 (Jan. 31, 2013), 78 FR 8635 (Feb. 6, 2013) (SR-BATS-2013-008).

<sup>7</sup> Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR-BATS-2010-016).

<sup>8</sup> *Id.*

<sup>9</sup> See Securities Exchange Act Release No. 68797 (Jan. 31, 2013), 78 FR 8635 (Feb. 6, 2013) (SR-BATS-2013-008); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release"); see also BATS Rule 11.17(b).

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

to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all Subject Securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed, including all cross-references to Rule 11.17(c)(4) contained in other portions of Rule 11.17.<sup>10</sup>

## 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>11</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>12</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. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 11.17 is necessary once the Plan is fully

operational and, if so, whether improvements can be made. Finally, the elimination of references to individual stock trading pauses will help to avoid confusion amongst market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual stock trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to all Subject Securities.

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

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority ("FINRA") and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistency across market centers.

### 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 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<sup>13</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>14</sup>

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, as it will allow the pilot program to continue uninterrupted, thereby avoiding

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>15</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:

### 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-2013-053 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-2013-053. 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

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

<sup>10</sup> The Exchange notes that certain Exchange Traded Products ("ETPs") are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 11.17(c)(4). See Securities Exchange Act Release No. 65113 (August 11, 2011), 76 FR 51089 (August 17, 2011) (SR-BATS-2011-028) (notice of filing and immediate effectiveness to define Subject Securities and to limit application of Rule 11.17(c)(4) to such securities). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 11.17(c)(1) through (3).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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-2013-053, and should be submitted on or before October 23, 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. 34-70528; File No. SR-NYSEArca-2013-99]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 5.3(i)(1)(i)(H) To Change The Required Advance Notice Period For Submitting Certain Notices to the Exchange

September 26, 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 23, 2013, NYSE Arca, Inc. ("NYSE Arca" 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 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 NYSE Arca Equities Rule 5.3(i)(1)(i)(H) to change the required advance notice period for submitting certain notices to the Exchange. 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 NYSE Arca Equities Rule 5.3(i)(1)(i)(H) to change the required advance notice period for submitting certain notices to the Exchange.

Under NYSE Arca Equities Rule 5.3(i)(1), each listed company is required to submit certain financial reports and related notices to the Exchange. Under paragraph (i)(H) of the rule, any notice with respect to the payment or non-payment of dividends should be provided to the Exchange at least 10 business days prior to the record date. The same notice requirement also applies to an issuance of rights to subscribe, a closing of stock transfer books, or the taking of a record of shareholders for any purposes. The Exchange proposes to amend this rule to change the required notice period from 10 business days to 10 calendar days in advance of the record date. This modification will align the Exchange's notice period requirements with those of New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT") and, together with the NYSE and the Exchange, the "NYSE Exchanges"), which are under common ownership with the Exchange.<sup>3</sup> The Exchange

<sup>3</sup> See NYSE Listed Company Manual Sections 204.12 (requiring 10 days notice to the NYSE as to any dividend action or action relating to a stock distribution in respect of a listed security) and 204.21 (requiring 10 days' notice to the NYSE of the fixing of a record date for any purpose) and NYSE MKT Company Guide Section 502. See also NYSE Listed Company Manual Section 703.03(C) for the NYSE's notice requirements with respect to rights offerings. While none of the aforementioned rules specify in their text whether the required notice must be 10 calendar or 10 business days in advance of the record date, both the NYSE and NYSE MKT have always interpreted those provisions as

believes that harmonizing its record date notification policies with those of the other NYSE Exchanges will reduce the possibility of confusion among listed issuers and their counsel. The NYSE Exchanges disseminate record date information broadly, including to market data vendors, the Depository Trust & Clearing Corporation ("DTCC") and broker-dealers, so investors are able to readily access record date information for securities they hold. Record date information is automatically disseminated to market participants almost immediately after Exchange staff input the information in the Exchange's data management systems, so the proposed shortening of the record date notification requirement will not impede the ability of the Exchange to disseminate record date information on a timely basis. The Exchange recognizes that a 10 calendar day period could include two weekends, so the maximum required notice could be effectively six business days, which is significantly shorter than the current 10 business day requirement. In addition, if that period includes an Exchange holiday, the effective maximum required notice could be five business days (or four business days when that period includes two holidays).

However, the Exchange notes that the record date notification policies of the other NYSE Exchanges have been in place for many years and that it is clear from this lengthy experience that 10 calendar days notice of the setting of a record dates has been sufficient for the needs of investors and that this is also the case where the 10 calendar day period includes one or more holidays. Prior to the date on which the proposed rule change becomes operative, the Exchange will inform all of its equity permit holders by issuing a client notice announcing the rule change and the date on which it will become operative.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5)

requiring 10 calendar days rather than 10 business days advance notice. The NYSE is considering submitting a filing seeking to eliminate from Section 204.21 the notice requirements with respect to shareholder meeting record dates. However, Section 204.21 would continue to require 10 days' notice of the setting of the record date for any other purpose, including all of those purposes specified in NYSE Arca Equities Rule 5.3(i)(1).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78a.

<sup>16</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.