

Required fields are shown with yellow backgrounds and asterisks.

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| Page 1 of * 27 | SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4 | | File No.* SR - 2012 - * 026 | Amendment No. (req. for Amendments *) | | | | |
| Proposed Rule Change by BATS Exchange Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 | | | | | | | | |
| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input checked="" type="checkbox"/> | Section 19(b)(3)(A) * <input type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> | | | |
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> | Rule | | | | | |
| | | | 19b-4(f)(1) <input checked="" type="checkbox"/> | 19b-4(f)(2) <input checked="" type="checkbox"/> | 19b-4(f)(3) <input checked="" type="checkbox"/> | 19b-4(f)(4) <input checked="" type="checkbox"/> | 19b-4(f)(5) <input checked="" type="checkbox"/> | 19b-4(f)(6) <input checked="" type="checkbox"/> |
| Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/> | | Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/> | | | | | | |
| Description Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). <input type="text" value="Proposal to adopt a market maker peg order."/> | | | | | | | | |
| Contact Information Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change. | | | | | | | | |
| First Name * | <input type="text" value="Anders"/> | | Last Name * | <input type="text" value="Franzon"/> | | | | |
| Title * | <input type="text" value="VP, Associate General Counsel"/> | | | | | | | |
| E-mail * | <input type="text" value="afranzon@batstrading.com"/> | | | | | | | |
| Telephone * | <input type="text" value="(913) 815-7154"/> | Fax | <input type="text" value="(913) 815-7119"/> | | | | | |
| Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer. | | | | | | | | |
| Date | <input type="text" value="06/26/2012"/> | | | | | | | |
| By | <input type="text" value="Anders Franzon"/> | | <input type="text" value="VP, Associate General Counsel"/> | | | | | |
| | (Name *) | | (Title *) | | | | | |
| NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. | | | <input type="button" value="Anders Franzon,"/> | | | | | |

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt a new Market Maker Peg Order to provide similar functionality as the automated functionality provided to market makers under Rule 11.8(e).

(a) The text of the proposed rule change is below. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

* * * * *

CHAPTER XI. TRADING RULES

* * * * *

11.9. Orders and Modifiers

Users may enter into the System the types of orders listed in this Rule 11.9, subject to the limitations set forth in this Rule or elsewhere in these Rules.

(a) – (b) No change.

(c) *Other Types of Orders*

(1) - (15) No change.

(16) *Market Maker Peg Order.* A limit order that, upon entry or at the beginning of Regular Trading Hours, as applicable, the bid or offer is automatically priced by the System at the Designated Percentage (as defined in Rule 11.8) away from the then current NBB and NBO, or if no NBB or NBO, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Rule 11.8(d). Users may submit Market Maker Peg

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Orders to the Exchange starting at the beginning of the Pre-Opening Session, but, unless otherwise directed by the User, the order will not be executable or automatically priced until the beginning of Regular Trading Hours and will expire at the end of Regular Trading Hours. Upon reaching the Defined Limit (as defined in Rule 11.8), the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current NBB and NBO, or, if no NBB or NBO, the order will, by default, be the Designated Percentage away from the last reported sale from the responsible single plan processor, unless instructed by the Market Maker to cancel rather than adjusting based on the last reported sale from the single plan processor. If a Market Maker Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage towards the then current NBB or NBO, which number of percentage points will be determined and published in a circular distributed to Members from time to time, the price of such bid or offer will be adjusted to the Designated Percentage away from the then current NBB and NBO. If no NBB or NBO, the order will, by default, be adjusted to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless instructed by the Market Maker to cancel rather than adjusting based on the last reported sale from the single plan processor. Market Maker Peg Orders are not eligible for routing pursuant to Rule 11.13(a)(2) and are always displayed on the Exchange. Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and re-submitting, as applicable, quotations that meet the requirements of Rule 11.8(d). A new timestamp is created for the order each time that it is automatically adjusted. For purposes of this paragraph, the Exchange will apply the Designated Percentage and Defined Limit as set forth in Rule 11.8, subject to the following exceptions. For all NMS stocks with a price less than \$1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, the Exchange will use the Designated Percentage and Defined Limit applicable to NMS stocks equal to or greater than \$1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. Nothing in this rule shall preclude a Market Maker from designating a more aggressive offset from the NBB or NBO than the given Designated Percentage for any individual Market Maker Peg Order. Where a Market Maker designates a more aggressive offset from the NBB or NBO, the Market Maker shall also designate a percentage away from the NBB or NBO or the price of the last reported sale from the responsible single plan processor at which the price of such bid or offer will be adjusted back to the Market Maker-designated offset from such price. If a Market Maker designates a more aggressive offset, the price of a Market Maker Peg Order bid or offer will be adjusted by the System in the same manner as the default Market Maker Peg Order functionality described above, except the System will use the more aggressive Market Maker-designated offset and Market Maker-designated percentages at which the bid or offer will be adjusted to the Market Maker-designated offset.

(d) – (g) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on June 23, 2012. No other action is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange is proposing to adopt a new Market Maker Peg Order to provide similar functionality presently available to Exchange market makers under Rule 11.8(e). The Exchange 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 adoption of the proposed Market Maker Peg Order. The purpose of this transition period, during which both the present automated system functionality under Rule 11.8(e) and the Market Maker Peg Order will operate concurrently, is to afford market makers with the opportunity to gradually migrate away from the present automated system functionality under Rule 11.8(e). Prior to the end of this three month period, the Exchange will submit a rule filing to retire the automated system functionality under Rule 11.8(e).

BATS adopted Rule 11.8(e) as part of an effort to address issues uncovered by the aberrant trading that occurred on May 6, 2010.³ The market maker quoter functionality offered by this rule is designed to help Exchange market makers meet the enhanced market maker obligations adopted post May 6, 2010,⁴ and avoid execution of market maker “stub quotes” in instances of aberrant trading.⁵ As part of these enhanced obligations, the Exchange requires market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid and National Best Offer,⁶ as appropriate. Although the market maker quoter has been successful in allowing Exchange market makers to meet their enhanced obligations and in avoiding the deleterious effect on the markets caused by

³ Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR-BATS-2010-025).

⁴ Id.

⁵ For each issue in which a market maker is registered, the market maker quoter functionality optionally creates a quotation for display to comply with market making obligations. Compliant displayed quotations are thereafter allowed to rest and are not adjusted unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, either: (a) shrinks 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 will be determined and published in a circular distributed to Members from time to time, or (b) expands to within 0.5% of the applicable percentage necessary to trigger an individual stock trading pause, whereupon such bid or offer will be 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 are 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 is 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).

⁶ As defined by Regulation NMS Rule 600(b)(42). 17 CFR 242.600.

“stub quote” executions, the market maker quoter presents difficulties to market makers in meeting their obligations under Rule 15c3-5 under the Act (the “Market Access Rule”)⁷ and Regulation SHO.⁸

The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. These controls must be reasonably designed to ensure compliance with all regulatory requirements, which are defined as “all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.”⁹

In addition to the obligations of the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking sell orders, obtaining a “locate” for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.¹⁰ While there are certain exceptions to some of the requirements of Regulation SHO where a market maker is engaged in bona-fide market making activities,¹¹ the

⁷ 17 CFR 240.15c3-5.

⁸ 17 CFR 242.200 through 204.

⁹ 17 CFR 240.15c3-5.

¹⁰ Supra note 8.

¹¹ See 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO’s “locate” requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged

availability of those exceptions is distinct and independent from whether a market maker submits an order that is a Market Maker Peg Order.

The current market maker quoter functionality offered to market makers reprices and “refreshes” a market maker’s quote when it is executed against, without any action required by the market maker. When a market maker’s quote is refreshed by the Exchange, however, the market maker has an obligation to ensure that the requirements of the Market Access Rule and Regulation SHO are met. To meet these obligations, a market maker must actively monitor the status of its quotes and ensure that the requirements of the Market Access Rule and Regulation SHO are being satisfied.

Market Maker Peg Order

In an effort to simplify market maker compliance with the requirements of the Market Access Rule and Regulation SHO, the Exchange is proposing to adopt a new

in bona fide market making in the security at the time they effect the short sale are excepted from the “locate” requirement. See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute bona-fide market making for purposes of claiming the exception to Regulation SHO’s “locate” requirement). See also Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698-9 (October 17, 2008) (providing guidance regarding what is bona-fide market making for purposes of complying with the market maker exception to Regulation SHO’s “locate” requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, market makers would not be able to rely solely on quotations priced in accordance with the Designated Percentages under proposed Rule 11.9(c)(14) or the market maker quoter functionality under Rule 11.8(e) for eligibility for the bona-fide market making exception to the “locate” requirement based on the criteria set forth by the Commission. It should also be noted that a determination of bona-fide market making is relevant for the purposes of a broker-dealer’s close-out obligations under Rule 204 of Regulation SHO. See 17 CFR 242.204(a)(3).

order type available only to Exchange market makers, which offers functionality similar to the market maker quoter functionality, but also allows a market maker to comply with the regulatory requirements of the Market Access Rule and Regulation SHO.

Specifically, the Exchange is proposing to replace the market maker quoter functionality with the Market Maker Peg Order. The Market Maker Peg Order would be a one-sided limit order and similar to other peg orders available to market participants in that the order is tied or “pegged” to a certain price,¹² but it would not be eligible for routing pursuant to Rule 11.13(a)(2) and would always be displayed. The Market Maker Peg Order would be limited to market makers and would have its price automatically set and adjusted, both upon entry and any time thereafter, in order to comply with the Exchange’s rules regarding market maker quotation requirements and obligations.¹³ Upon entry and at any time the order exceeds either the Defined Limit, as described in Rule 11.8(d)(2)(E), or moves a specified number of percentage points away from the Designated Percentage toward the then current National Best Bid or National Best Offer, the Market Maker Peg Order would be priced by the Exchange at the Designated Percentage¹⁴ away from the then current National Best Bid and National Best Offer.

¹² Rule 11.9(c)(8).

¹³ The Market Maker Peg Order is one-sided so that a market maker seeking to use Market Maker Peg Orders to comply with the Exchange’s rules regarding market maker quotation requirements would need to submit both a bid and an offer using the order type.

¹⁴ The Designated Percentage is the individual stock pause trigger percentage listed in Interpretations and Policies .01 to Rule 11.8, less either: (i) two percentage points for securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products and for all other NMS stocks with a price equal to or greater than \$1 per share; or (ii) twenty percentage points for all NMS stocks with a price less than \$1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. See Rule 11.8(d)(2)(D).

Where there is no National Best Bid or National Best Offer, the Market Maker Peg Order would, by default, be priced at the Designated Percentage away from the last reported sale from the responsible single plan processor, unless instructed by the market maker upon entry to cancel or reject where there is no NBB or NBO. In the absence of a National Best Bid or National Best Offer and last reported sale, the order will be cancelled or rejected. Adjustment to the Designated Percentage is designed to avoid an execution against a Market Maker Peg Order that would initiate an individual stock trading pause. In the event of an execution against a Market Maker Peg Order that reduces the size of the Market Maker Peg Order below one round lot, the market maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy their obligations under Rule 11.8.¹⁵ In the event that pricing the Market Maker Peg Order 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, to the Designated Percentage away from the last reported sale from the responsible single plan processor would result in the order exceeding its limit price, the order will be cancelled or rejected.

The Exchange is also proposing to allow a market maker to designate an offset more aggressive (i.e. smaller) than the Designated Percentage for any given Market Maker Peg Order. This functionality will allow a market maker to quote at price levels that are closer to the National Best Bid and National Best Offer if it elects to do so. To use this functionality, upon entry, a market maker must designate the desired offset and a percentage away from the NBB or NBO at which the price of such bid or offer will be

¹⁵ Rule 11.8 generally sets forth the Exchange's market maker requirements, which include quotation and pricing obligations.

adjusted back to the desired offset (the “Reprice Percentage”).¹⁶ Thereafter,¹⁷ a Market Maker Peg Order with a market maker-designated offset will have its price automatically adjusted to the market maker-designated offset from the National Best Bid or National Best Offer or last reported sale upon reaching the Reprice Percentage.¹⁸ Identical to the behavior of Market Maker Peg Orders using the Defined Percentage and Defined Limit, in the absence of a National Best Bid or National Best Offer, Market Maker Peg Orders with a market maker-designated offset will, by default, have their price adjusted to the Market Maker-designated offset from the price of the last reported sale from the responsible single plan processor, or, if otherwise instructed by the Market Maker, will be cancelled or rejected. In the absence of a National Best Bid or National Best Offer and a last reported sale, a Market Maker Peg Order will be cancelled or rejected. In the event that pricing the Market Maker Peg Order at the market maker-designated offset away from the then current National Best Bid or National Best Offer or last reported sale would result in the order exceeding its limit price, the order will be cancelled or rejected.

¹⁶ If a market maker wishes, it can designate a more aggressive bid while using the Defined Percentage and Defined Limit for its offer, or vice versa.

¹⁷ In the absence of an offset designation and/or Reprice Percentage, a Market Maker Peg Order will default to using the Defined Percentage and Defined Limit, and the repricing process whereby, upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid or National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor.

¹⁸ Market Maker Peg Orders with a market maker-designated offset may be able to qualify as bon-fide market making for purposes of Regulation SHO, depending on the facts and circumstances. A market maker entering such an order must consider the factors set forth by the Commission in determining whether reliance on the exceptions from the “locate” requirement of Rule 203 for bona-fide market making is appropriate with respect to the particular Market Maker Peg Order and its designated offset. See supra note 11.

The Market Maker Peg Order will be accepted during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions. By default, the Market Maker Peg Order will be priced at 9:30 a.m. and will only be executable during Regular Trading Hours, however, upon entry, a User may direct the Exchange to automatically price and execute a Market Maker Peg Order during the Pre-Opening Session¹⁹ and After Hours Trading Session (“Extended Hours Market Maker Peg Orders”).²⁰ During the Pre-Opening Session and After Hours Trading Session, the wider Designated Percentage and Defined Limit associated with the 9:30am–9:45am and 3:35pm–4:00pm periods under Rule 11.8(e) will be applied to Extended Hours Market Maker Peg Orders for which the market maker has not designated an offset more aggressive than the Designated Percentage.

BATS believes that this order-based approach is superior in terms of the ease in complying with the requirements of the Market Access Rule and Regulation SHO while also providing similar quote adjusting functionality to its market makers. Market makers would have control of order origination, 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, while also meeting their Exchange market making obligations. In this regard, the Market Maker Peg Order, like the current market maker quoter functionality, does not ensure that the market maker is satisfying the requirements of

¹⁹ The Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

²⁰ The After Hours Trading Session means the time between 4:00 p.m. and 5:00 p.m. Eastern Time.

Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

b. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,²¹ which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)²² of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum market maker quotation requirements and member obligations to comply with the regulatory requirements of the Market Access Rule and Regulation SHO. The Exchange also believes that providing Exchange market makers with a transition period, during which they may adequately test the new functionality, will serve to minimize the potential market impact caused by the implementation of the order type.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78k-1(a)(1).

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as possible. Because a similar rule filing is being proposed by another market that also offers functionality similar to market maker quoter functionality to its market makers,²³ the Exchange believes that this amendment will increase transparency and uniformity regarding minimum market maker quotation obligations, while also ensuring that Exchange market makers are able to satisfy the requirements of the Market Access Rule and Regulation SHO. In particular, the Exchange is proposing to adopt a new order type as an alternative means of addressing the execution of numerous transactions at stub quote prices during the declines that the market experienced on the afternoon of May 6, 2010, while also ensuring that Exchange market makers are able to perform adequate checks as required by the Market Access Rule. As such, the Exchange does not believe that the proposal should be delayed.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

²³ See Securities Exchange Act Release No. 67203 (June 14, 2012), 77 FR 37086 (June 20, 2012) (SR NASDAQ-2012-066).

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 5: Not applicable.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-BATS-2012-026)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Adopt a New Market Maker Peg Order Available to Exchange Market Makers.

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 June 26, 2012, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 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 adopt a new Market Maker Peg Order to provide similar functionality as the automated functionality provided to market makers under Rule 11.8(e).

The text of the proposed rule change is available at the Exchange’s website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room. The proposed rule text can be found in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange is proposing to adopt a new Market Maker Peg Order to provide similar functionality presently available to Exchange market makers under Rule 11.8(e). The Exchange 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 adoption of the proposed Market Maker Peg Order. The purpose of this transition period, during which both the present automated system functionality under Rule 11.8(e) and the Market Maker Peg Order will operate concurrently, is to afford market makers with the opportunity to gradually migrate away from the present automated system functionality under Rule 11.8(e). Prior to the end of this three month period, the Exchange will submit a rule filing to retire the automated system functionality under Rule 11.8(e).

BATS adopted Rule 11.8(e) as part of an effort to address issues uncovered by the aberrant trading that occurred on May 6, 2010.³ The market maker quoter functionality offered by this rule is designed to help Exchange market makers meet the enhanced market maker obligations adopted post May 6, 2010,⁴ and avoid execution of market

³ Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR-BATS-2010-025).

⁴ Id.

maker “stub quotes” in instances of aberrant trading.⁵ As part of these enhanced obligations, the Exchange requires market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid and National Best Offer,⁶ as appropriate. Although the market maker quoter has been 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 market maker quoter presents difficulties to market makers in meeting their obligations under Rule 15c3-5 under the Act (the “Market Access Rule”)⁷ and Regulation SHO.⁸

⁵ For each issue in which a market maker is registered, the market maker quoter functionality optionally creates a quotation for display to comply with market making obligations. Compliant displayed quotations are thereafter allowed to rest and are not adjusted unless the relationship between the quotation and its related national best bid or national best offer, as appropriate, either: (a) shrinks 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 will be determined and published in a circular distributed to Members from time to time, or (b) expands to within 0.5% of the applicable percentage necessary to trigger an individual stock trading pause, whereupon such bid or offer will be 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 are 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 is 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).

⁶ As defined by Regulation NMS Rule 600(b)(42). 17 CFR 242.600.

⁷ 17 CFR 240.15c3-5.

⁸ 17 CFR 242.200 through 204.

The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. These controls must be reasonably designed to ensure compliance with all regulatory requirements, which are defined as “all federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.”⁹

In addition to the obligations of the Market Access Rule, broker-dealers have independent obligations that arise under Regulation SHO. Regulation SHO obligations generally include properly marking sell orders, obtaining a “locate” for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.¹⁰ While there are certain exceptions to some of the requirements of Regulation SHO where a market maker is engaged in bona-fide market making activities,¹¹ the

⁹ 17 CFR 240.15c3-5.

¹⁰ Supra note 8.

¹¹ See 17 CFR 242.203(b)(1). The Commission adopted a narrow exception to Regulation SHO’s “locate” requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged in bona fide market making in the security at the time they effect the short sale are excepted from the “locate” requirement. See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute bona-fide market making for purposes of claiming the exception to Regulation SHO’s “locate” requirement). See also Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698-9 (October 17, 2008) (providing guidance regarding what is bona-fide market making for purposes of complying with the market maker exception to Regulation SHO’s “locate”

availability of those exceptions is distinct and independent from whether a market maker submits an order that is a Market Maker Peg Order.

The current market maker quoter functionality offered to market makers reprices and “refreshes” a market maker’s quote when it is executed against, without any action required by the market maker. When a market maker’s quote is refreshed by the Exchange, however, the market maker has an obligation to ensure that the requirements of the Market Access Rule and Regulation SHO are met. To meet these obligations, a market maker must actively monitor the status of its quotes and ensure that the requirements of the Market Access Rule and Regulation SHO are being satisfied.

Market Maker Peg Order

In an effort to simplify market maker compliance with the requirements of the Market Access Rule and Regulation SHO, the Exchange is proposing to adopt a new order type available only to Exchange market makers, which offers functionality similar to the market maker quoter functionality, but also allows a market maker to comply with the regulatory requirements of the Market Access Rule and Regulation SHO.

requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers). Thus, market makers would not be able to rely solely on quotations priced in accordance with the Designated Percentages under proposed Rule 11.9(c)(14) or the market maker quoter functionality under Rule 11.8(e) for eligibility for the bona-fide market making exception to the “locate” requirement based on the criteria set forth by the Commission. It should also be noted that a determination of bona-fide market making is relevant for the purposes of a broker-dealer’s close-out obligations under Rule 204 of Regulation SHO. See 17 CFR 242.204(a)(3).

Specifically, the Exchange is proposing to replace the market maker quoter functionality with the Market Maker Peg Order. The Market Maker Peg Order would be a one-sided limit order and similar to other peg orders available to market participants in that the order is tied or “pegged” to a certain price,¹² but it would not be eligible for routing pursuant to Rule 11.13(a)(2) and would always be displayed. The Market Maker Peg Order would be limited to market makers and would have its price automatically set and adjusted, both upon entry and any time thereafter, in order to comply with the Exchange’s rules regarding market maker quotation requirements and obligations.¹³ Upon entry and at any time the order exceeds either the Defined Limit, as described in Rule 11.8(d)(2)(E), or moves a specified number of percentage points away from the Designated Percentage toward the then current National Best Bid or National Best Offer, the Market Maker Peg Order would be priced by the Exchange at the Designated Percentage¹⁴ away from the then current National Best Bid and National Best Offer. Where there is no National Best Bid or National Best Offer, the Market Maker Peg Order would, by default, be priced at the Designated Percentage away from the last reported

¹² Rule 11.9(c)(8).

¹³ The Market Maker Peg Order is one-sided so that a market maker seeking to use Market Maker Peg Orders to comply with the Exchange’s rules regarding market maker quotation requirements would need to submit both a bid and an offer using the order type.

¹⁴ The Designated Percentage is the individual stock pause trigger percentage listed in Interpretations and Policies .01 to Rule 11.8, less either: (i) two percentage points for securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products and for all other NMS stocks with a price equal to or greater than \$1 per share; or (ii) twenty percentage points for all NMS stocks with a price less than \$1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. See Rule 11.8(d)(2)(D).

sale from the responsible single plan processor, unless instructed by the market maker upon entry to cancel or reject where there is no NBB or NBO. In the absence of a National Best Bid or National Best Offer and last reported sale, the order will be cancelled or rejected. Adjustment to the Designated Percentage is designed to avoid an execution against a Market Maker Peg Order that would initiate an individual stock trading pause. In the event of an execution against a Market Maker Peg Order that reduces the size of the Market Maker Peg Order below one round lot, the market maker would need to enter a new order, after performing the regulatory checks discussed above, to satisfy their obligations under Rule 11.8.¹⁵ In the event that pricing the Market Maker Peg Order 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, to the Designated Percentage away from the last reported sale from the responsible single plan processor would result in the order exceeding its limit price, the order will be cancelled or rejected.

The Exchange is also proposing to allow a market maker to designate an offset more aggressive (i.e. smaller) than the Designated Percentage for any given Market Maker Peg Order. This functionality will allow a market maker to quote at price levels that are closer to the National Best Bid and National Best Offer if it elects to do so. To use this functionality, upon entry, a market maker must designate the desired offset and a percentage away from the NBB or NBO at which the price of such bid or offer will be

¹⁵ Rule 11.8 generally sets forth the Exchange's market maker requirements, which include quotation and pricing obligations.

adjusted back to the desired offset (the “Reprice Percentage”).¹⁶ Thereafter,¹⁷ a Market Maker Peg Order with a market maker-designated offset will have its price automatically adjusted to the market maker-designated offset from the National Best Bid or National Best Offer or last reported sale upon reaching the Reprice Percentage.¹⁸ Identical to the behavior of Market Maker Peg Orders using the Defined Percentage and Defined Limit, in the absence of a National Best Bid or National Best Offer, Market Maker Peg Orders with a market maker-designated offset will, by default, have their price adjusted to the Market Maker-designated offset from the price of the last reported sale from the responsible single plan processor, or, if otherwise instructed by the Market Maker, will be cancelled or rejected. In the absence of a National Best Bid or National Best Offer and a last reported sale, a Market Maker Peg Order will be cancelled or rejected. In the event that pricing the Market Maker Peg Order at the market maker-designated offset away

¹⁶ If a market maker wishes, it can designate a more aggressive bid while using the Defined Percentage and Defined Limit for its offer, or vice versa.

¹⁷ In the absence of an offset designation and/or Reprice Percentage, a Market Maker Peg Order will default to using the Defined Percentage and Defined Limit, and the repricing process whereby, upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid or National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor.

¹⁸ Market Maker Peg Orders with a market maker-designated offset may be able to qualify as bon-fide market making for purposes of Regulation SHO, depending on the facts and circumstances. A market maker entering such an order must consider the factors set forth by the Commission in determining whether reliance on the exceptions from the “locate” requirement of Rule 203 for bona-fide market making is appropriate with respect to the particular Market Maker Peg Order and its designated offset. See supra note 11.

from the then current National Best Bid or National Best Offer or last reported sale would result in the order exceeding its limit price, the order will be cancelled or rejected.

The Market Maker Peg Order will be accepted during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions. By default, the Market Maker Peg Order will be priced at 9:30 a.m. and will only be executable during Regular Trading Hours, however, upon entry, a User may direct the Exchange to automatically price and execute a Market Maker Peg Order during the Pre-Opening Session¹⁹ and After Hours Trading Session (“Extended Hours Market Maker Peg Orders”).²⁰ During the Pre-Opening Session and After Hours Trading Session, the wider Designated Percentage and Defined Limit associated with the 9:30am–9:45am and 3:35pm–4:00pm periods under Rule 11.8(e) will be applied to Extended Hours Market Maker Peg Orders for which the market maker has not designated an offset more aggressive than the Designated Percentage.

BATS believes that this order-based approach is superior in terms of the ease in complying with the requirements of the Market Access Rule and Regulation SHO while also providing similar quote adjusting functionality to its market makers. Market makers would have control of order origination, 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

¹⁹ The Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

²⁰ The After Hours Trading Session means the time between 4:00 p.m. and 5:00 p.m. Eastern Time.

when placing any order, while also meeting their Exchange market making obligations. In this regard, the Market Maker Peg Order, like the current market maker quoter functionality, does not ensure that the market maker is satisfying the requirements of Regulation SHO, including the satisfaction of the locate requirement of Rule 203(b)(1) or an exception thereto.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,²¹ which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)²² of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning minimum market maker quotation requirements and member obligations to comply with the regulatory requirements of the Market Access Rule and Regulation SHO. The Exchange also believes that providing Exchange market makers with a transition period, during which they may adequately test the new functionality, will serve to minimize the potential market impact caused by the implementation of the order type.

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78k-1(a)(1).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden 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.

III. Date of Effectiveness of the Proposed Rule Changes 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 Exchange 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 proposal 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 e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2012-026 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-2012-026. This file number should be included on the subject line if e-mail 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 changes 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 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 available publicly. All submissions should refer to File No. SR-BATS-2012-026 and should be submitted on or before [_____21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Kevin M. O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).