



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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 the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to institute a fee change in connection with an incentive program for Exchange-registered market makers in securities listed on the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on November 10, 2009. Exchange staff will advise the Board of Directors of the Exchange of any

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<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)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

action taken pursuant to delegated authority. 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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of securities of issuers on the Exchange.<sup>5</sup> More recently, the Exchange received approval to operate a program that is designed to incentivize certain market makers registered with the Exchange as Competitive Liquidity Providers ("CLPs") to enhance liquidity on the Exchange in Exchange-listed securities ("Competitive Liquidity Provider Program" or "CLP Program").<sup>6</sup> The Exchange subsequently adopted financial incentives for the Competitive Liquidity Provider Program.<sup>7</sup> These incentives include daily rebates to CLPs awarded based on competitive quoting activity and the waiver of applicable execution fees in Exchange auctions of Exchange-listed securities. The Exchange proposes to eliminate the waiver of fees for executions in Exchange auctions by CLPs, as further described below. The Exchange also proposes to correct a typographical error in its rules relating to the numbering of the

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<sup>5</sup> See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>6</sup> See Securities Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR-BATS-2011-051) ("CLP Program Approval").

<sup>7</sup> See Securities Exchange Act Release No. 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR-BATS-2012-011) ("CLP Financial Incentives Filing").

financial incentives for the CLP Program. Specifically, when the CLP Program was originally proposed, the Exchange numbered the section applicable to financial incentives as section (k), and reserved that section for later.<sup>8</sup> However, when such financial incentives were adopted, they were adopted as section (j).<sup>9</sup> Accordingly, the Exchange proposes re-numbering the financial incentives section as (k), as was originally intended, and eliminating the reference to “Reserved.”

In order to incentivize Members to participate in the CLP Program, the Exchange currently waives applicable execution fees in Exchange auctions for any CLP that receives a daily rebate for a specific Exchange-listed security on at least two (2) trading days during a calendar month. Based on the Exchange’s experience in operating the CLP Program, the Exchange proposes to eliminate the waiver of applicable execution fees for CLPs. This financial incentive has very rarely been applicable, as the majority of the orders entered to date by CLPs that have participated in Exchange auctions have been order types that are not subject to a charge when entered by any Member (certain orders, including orders entered into the Exchange’s order book not explicitly designated for the auction process, are exempt from fees). In light of this fact, the burden upon the Exchange in administering the fee waiver exceeds the benefit provided to CLPs pursuant to the current pricing structure, particularly in light of the fact that all other financial incentives to CLPs will remain unchanged.

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<sup>8</sup> See CLP Program Approval, supra note 6.

<sup>9</sup> See CLP Financial Incentives Filing, supra note 7.

(b) Statutory Basis

The Exchange believes that the proposed rule change 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 of the Act.<sup>10</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,<sup>11</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the elimination of the waiver of auction fees is equitable and not unreasonably discriminatory because it will equally affect all CLPs and because CLPs will be charged the same rates for auction executions as are charged to all other Members. The Exchange believes that the elimination of the waiver of auction fees is reasonable because the waiver has not resulted in significant savings to CLPs nor has it provided the intended incentive to participate in the CLP Program.

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

The proposed rule change does not impose any burden on competition.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (b)(5).

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and Rule 19b-4(f)(2) thereunder,<sup>13</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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.

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

Not applicable.

9. Exhibits

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

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

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

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2012-036)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees Applicable to the Exchange's Competitive Liquidity Provider Program.

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 August 31, 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 Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to institute a fee change in connection with an incentive program for Exchange-registered market makers ("Market Makers") in securities listed on the Exchange. Changes to the Exchange's fees pursuant to this proposal will be effective upon filing.

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<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)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

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.

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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of securities of issuers on the Exchange.<sup>5</sup> More recently, the Exchange received approval to operate a program that is designed to incentivize certain market makers registered with the Exchange as Competitive Liquidity Providers ("CLPs") to enhance liquidity on the Exchange in Exchange-listed securities ("Competitive Liquidity Provider Program" or "CLP Program").<sup>6</sup> The Exchange subsequently adopted financial incentives for the Competitive Liquidity Provider

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<sup>5</sup> See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>6</sup> See Securities Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR-BATS-2011-051) ("CLP Program Approval").

Program.<sup>7</sup> These incentives include daily rebates to CLPs awarded based on competitive quoting activity and the waiver of applicable execution fees in Exchange auctions of Exchange-listed securities. The Exchange proposes to eliminate the waiver of fees for executions in Exchange auctions by CLPs, as further described below. The Exchange also proposes to correct a typographical error in its rules relating to the numbering of the financial incentives for the CLP Program. Specifically, when the CLP Program was originally proposed, the Exchange numbered the section applicable to financial incentives as section (k), and reserved that section for later.<sup>8</sup> However, when such financial incentives were adopted, they were adopted as section (j).<sup>9</sup> Accordingly, the Exchange proposes re-numbering the financial incentives section as (k), as was originally intended, and eliminating the reference to “Reserved.”

In order to incentivize Members to participate in the CLP Program, the Exchange currently waives applicable execution fees in Exchange auctions for any CLP that receives a daily rebate for a specific Exchange-listed security on at least two (2) trading days during a calendar month. Based on the Exchange’s experience in operating the CLP Program, the Exchange proposes to eliminate the waiver of applicable execution fees for CLPs. This financial incentive has very rarely been applicable, as the majority of the orders entered to date by CLPs that have participated in Exchange auctions have been order types that are not subject to a charge when entered by any Member (certain orders, including orders entered into the Exchange’s order book not explicitly designated for the

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<sup>7</sup> See Securities Exchange Act Release No. 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR-BATS-2012-011) (“CLP Financial Incentives Filing”).

<sup>8</sup> See CLP Program Approval, *supra* note 6.

<sup>9</sup> See CLP Financial Incentives Filing, *supra* note 7.

auction process, are exempt from fees). In light of this fact, the burden upon the Exchange in administering the fee waiver exceeds the benefit provided to CLPs pursuant to the current pricing structure, particularly in light of the fact that all other financial incentives to CLPs will remain unchanged.

## 2. Statutory Basis

The Exchange believes that the proposed rule change 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 of the Act.<sup>10</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,<sup>11</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the elimination of the waiver of auction fees is equitable and not unreasonably discriminatory because it will equally affect all CLPs and because CLPs will be charged the same rates for auction executions as are charged to all other Members. The Exchange believes that the elimination of the waiver of auction fees is reasonable because the waiver has not resulted in significant savings to CLPs nor has it provided the intended incentive to participate in the CLP Program.

### (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.

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<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (b)(5).

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

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and Rule 19b-4(f)(2) thereunder,<sup>13</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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 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](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2012-036 on the subject line.

Paper Comments:

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

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

- 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-2012-036. 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 website (<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 website 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 am and 3:00 pm. 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-2012-036 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.<sup>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

Rule 11.8. Obligations of Market Makers

(a)–(e) (No changes.)

Interpretations and Policies

.01 (No changes.)

.02 Competitive Liquidity Provider Program

(a)-(j) (No changes.)

[(j)](k) *Financial Incentives for CLPs.*

(1) (No changes.)

[(2) *Auction Executions.* Any CLP that receives a daily rebate for a specific Exchange-listed security on at least two (2) trading days during a calendar month will not be charged in the subsequent calendar month for any executions of transactions in such security in any auction conducted by the Exchange of such security pursuant to Rule 11.23. In the initial calendar month of a security’s listing on the Exchange, a CLP that is assigned the security will not be charged for any executions in the security that occur in any auction of the security that is conducted by the Exchange pursuant to Rule 11.23.]

[(k) Financial Incentives for CLPs

(Reserved.)]

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