

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="27"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="022"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Filing 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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" 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 <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**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 action.

First Name \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**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.

(Title \*)

Date  By

(Name \*)

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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

Add Remove View

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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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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, security-based swap submission, or advance notice 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 in order to amend the functionality of the Market Maker Peg Order to more closely resemble analogous order types offered by NASDAQ Stock Market LLC (“Nasdaq”) and EDGX Exchange, Inc. (“EDGX”)<sup>3</sup> and to make certain clarifying changes to the rule. The Exchange has designated this proposal as a non-controversial filing and requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>4</sup> If such waiver is granted by the Commission, the Exchange shall implement this rule proposal immediately.

(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

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

<sup>4</sup> 17 CFR 240.19b-4.

10, 2009. Exchange staff will advise the Board of Directors of the Exchange of any 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

The purpose of this proposed rule change is to amend BATS Rule 11.9(c)(16). Specifically, the Exchange proposes to: (1) remove the option to allow Market Maker Peg Orders to be priced and executed during the Pre-Opening Session<sup>5</sup> and the After Hours Trading Session<sup>6</sup> and to cancel all Market Maker Peg Orders that are on the BATS Book<sup>7</sup> at the end of Regular Trading Hours; (2) remove the option for a Market Maker Peg Order to be automatically cancelled where there is no NBBO and the order is priced based on the last reported sale from the single plan processor; (3) remove the functionality that would allow a Market Maker to designate a more aggressive offset from the NBBO; (4) make clear that a Market Maker Peg Order will not peg to itself; and (5) make clear that only registered Market Makers are eligible to enter Market Maker Peg Orders. The Exchange is also proposing to reaffirm that it will continue to offer the

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<sup>5</sup> Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

<sup>6</sup> After Hours Trading Session means the time between 4:00 p.m. and 5:00 p.m. Eastern Time.

<sup>7</sup> BATS Book means the System's electronic file of orders.

present automated functionality provided to market makers under Rule 11.8(e) for a period of three months after the implementation of the Market Maker Peg Order.

Market Maker Peg Orders Entered Outside of Regular Trading Hours

The Exchange is proposing to amend BATS Rule 11.9(c)(16) to eliminate the option for Market Maker Peg Orders to be priced and executed outside of Regular Trading Hours and to cancel all Market Maker Peg Orders that are on the BATS Book at the end of Regular Trading Hours. As currently written, a Market Maker may enter a Market Maker Peg Order at any time during the Pre-Opening Session<sup>8</sup> or Regular Trading Hours, with an order entered during the Pre-Opening Session, by default, to remain unpriced and unexecutable until Regular Trading Hours, however, a Market Maker could designate that the order be priced and executable immediately upon entry during the Pre-Opening Session.

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

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

obligations outside of Regular Trading Hours, the Exchange does not believe that allowing Market Maker Peg Orders to be priced and executed outside of Regular Trading Hours provides Market Makers with any benefit that would warrant the additional complexity that the functionality would require. As such, the Exchange believes that eliminating the ability to have Market Maker Peg Orders price and execute outside of Regular Trading Hours will, in conjunction with the other changes proposed in this filing, act to simplify the Market Maker Peg Order type, thereby increasing its utility to Market Makers and decreasing the likelihood of unforeseen complications.

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

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

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

#### Eliminating More Aggressive Offsets from the NBBO

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

The Exchange is proposing to eliminate this functionality in order to, as mentioned above, simplify the Market Maker Peg Order functionality. Market Makers will still be able to enter orders priced more aggressively than the automatically priced Market Maker Peg Orders and will have access to existing pegged order functionality. The Exchange believes that this existing functionality will provide Market Makers with the necessary tools to enter orders priced more aggressively than the Market Maker Peg Order while not adding an additional level of complexity by requiring Market Makers to establish additional parameters for their Market Maker Peg Orders.

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

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

that the Market Maker Peg Order is the NBBO. Rather, the Exchange will only adjust the market Maker Peg Order when there is either a new consolidated last sale or a new NBBO is established by a national securities exchange.

Restriction of Market Maker Peg Orders to Market Makers

The Exchange is proposing to amend BATS Rule 11.9(c)(16) in order to make clear that only a registered Market Maker can enter a Market Maker Peg Order. The Exchange believes that, as currently constructed, only a registered Market Maker is allowed to enter Market Maker Peg Orders under Rule 11.9(c)(16) despite lacking any explicit language stating as much. As discussed above, the order type was created to help Market Makers comply with their quoting requirements on the Exchange and, for that reason, the behaviors of the Market Maker Peg Order are based specifically on the Exchange's quoting requirements. The Exchange does not make the order type available to other market participants because it does not believe that there would be any demand for the order type or that it would be particularly useful for market participants that are not Market Makers, especially given the availability of more customizable peg orders.<sup>9</sup> In order to make it abundantly clear, however, the Exchange is proposing to amend the rule to explicitly state that only registered Market Makers can enter Market Maker Peg Orders.

(b) Statutory Basis

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

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that eliminating the ability of Market Maker Peg Orders to be priced and executed outside of Regular Trading Hours and cancelling all Market Maker Peg Orders on the BATS Book at the end of Regular Trading Hours will result in a continuing benefit to market participants by simplifying the process of entering and cancelling Market Maker Peg Orders and including only the functionality necessary for Market Makers to meet their regulatory obligations. Additionally, the Exchange believes that the proposal will foster cooperation and coordination with processing information with respect to transactions in securities by preventing the Exchange from sending a potentially significantly larger than normal number of orders to the SIPs at the beginning of Regular Trading Hours when Market Maker Peg Orders entered during the Pre-Opening Session would be priced and become eligible for execution at exactly the same time. Similarly, the Exchange believes that eliminating the option to have a Market Maker Peg Order automatically cancel an order that would be priced based on the last reported sale from the single plan processor will result in a continuing benefit to market

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

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

participants by simplifying the functionality and corresponding complexity of implementation of Market Maker Peg Orders. The Exchange also believes that removing the functionality that would allow a Market Maker to designate a more aggressive offset from the NBBO will result in a continuing benefit to market participants by further simplifying the functionality of Market Maker Peg Orders to include only the functionality necessary for Market Makers to meet their regulatory obligations. The Exchange does not believe that removing this functionality will disincentivize Market Makers from posting more aggressive quotes. Rather, the Exchange believes that, similar to the market maker quoter, Market Makers will use the Market Maker Peg Order to satisfy the Exchange's quoting requirements, while continuing to enter and manage more aggressively priced orders using existing order types.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed changes to the Market Maker Peg Order type functionality will further align the Exchange's functionality with that offered by certain other competing market centers. Specifically, the rule change proposed herein is based on Nasdaq Rule 4751(f)(15) and EDGX Rule 11.5(c)(15).<sup>12</sup> By adopting changes to functionality to align with functionality in place elsewhere, as well as simplifying such

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<sup>12</sup> See Securities Exchange Act Release Nos. 67203 (June 14, 2012), 77 FR 37086 (June 20, 2012) (SR NASDAQ-2012-066); 67959 (October 2, 2012), 77 FR 61449 (October 9, 2012) (SR-EDGX-2012-44); 68596 (January 7, 2013), 78 FR 2477 (January 11, 2013) (SR-EDGX-2012-49).

functionality, the Exchange believes that it is reducing the potential for confusion amongst market participants.

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.

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)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>13</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.<sup>15</sup> The rule change proposed herein is based on Nasdaq Rule 4751(f)(15) and EDGX Rule

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

<sup>14</sup> 17 CFR 240.19b-4.

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

11.5(c)(15)<sup>16</sup> and does not raise any new policy issues. In addition, the rule change proposed herein does not impose any significant burden on competition and would allow the Exchange to offer its Market Makers Market Maker Peg Order functionality similar to that offered by Nasdaq and EDGX. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests the Commission to waive the noted operative delay so that the Exchange may make these improvements and clarifications to the Market Maker Peg Order effective immediately. Such waiver would help simplify the Market Maker Peg Order and address any technical or operative issues that member organizations may experience if the Exchange's implementation of Market Maker Peg Order is different from that of other exchanges.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

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<sup>16</sup> See supra note 12.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

The proposed rule change is based on Nasdaq Rule 4751(f)(15) and EDGX Rule 11.5(c)(15).<sup>19</sup> Although similar in all material respects to EDGX Rule 11.5(c)(15), the proposed rule, as amended, differs from Nasdaq Rule 4751(f)(15) in part in that it would not allow a User to designate an offset more aggressive than the Designated Percentage. The Exchange also notes that the Rule differs from Nasdaq Rule 4751(f)(15) and EDGX Rule 11.5(c)(15) in that the Exchange does not specify that it will reject Market Maker Peg Orders when there is no NBBO and no last reported sale. The Exchange notes that the only time that there will be no last reported sale is prior to the initial public offering of a new issue. In all scenarios other than an initial public offering, there will be a last reported sale because last reported sale is available and used industry-wide from previous trading days. Given the limited scope of the scenario where applicable and the fact that all trading is halted in a new issue prior to its commencement of trading on the primary listing market, the Exchange believes that the language regarding rejecting Market Maker Peg Orders could lead to confusion.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

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<sup>19</sup> See supra note 12.

11. Exhibits

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

Exhibits 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2013-022)

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

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 March 22, 2013, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposal to amend the functionality of the Market Maker Peg Order to more closely resemble analogous order types offered by NASDAQ Stock Market LLC (“Nasdaq”) and EDGX Exchange, Inc. (“EDGX”)<sup>3</sup> and to make certain clarifying changes to the rule.

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

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend BATS Rule 11.9(c)(16). Specifically, the Exchange proposes to: (1) remove the option to allow Market Maker Peg Orders to be priced and executed during the Pre-Opening Session<sup>4</sup> and the After Hours Trading Session<sup>5</sup> and to cancel all Market Maker Peg Orders that are on the BATS Book<sup>6</sup> at the end of Regular Trading Hours; (2) remove the option for a Market Maker Peg Order to be automatically cancelled where there is no NBBO and the order is priced based on the last reported sale from the single plan processor; (3) remove the functionality that would allow a Market Maker to designate a more aggressive offset from the NBBO; (4) make clear that a Market Maker Peg Order will not peg to itself; and (5) make clear that only registered Market Makers are eligible to enter Market Maker Peg Orders. The Exchange is also proposing to reaffirm that it will continue to offer the

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

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

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

present automated functionality provided to market makers under Rule 11.8(e) for a period of three months after the implementation of the Market Maker Peg Order.

Market Maker Peg Orders Entered Outside of Regular Trading Hours

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

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

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

obligations outside of Regular Trading Hours, the Exchange does not believe that allowing Market Maker Peg Orders to be priced and executed outside of Regular Trading Hours provides Market Makers with any benefit that would warrant the additional complexity that the functionality would require. As such, the Exchange believes that eliminating the ability to have Market Maker Peg Orders price and execute outside of Regular Trading Hours will, in conjunction with the other changes proposed in this filing, act to simplify the Market Maker Peg Order type, thereby increasing its utility to Market Makers and decreasing the likelihood of unforeseen complications.

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

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

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

#### Eliminating More Aggressive Offsets from the NBBO

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

The Exchange is proposing to eliminate this functionality in order to, as mentioned above, simplify the Market Maker Peg Order functionality. Market Makers will still be able to enter orders priced more aggressively than the automatically priced Market Maker Peg Orders and will have access to existing pegged order functionality. The Exchange believes that this existing functionality will provide Market Makers with the necessary tools to enter orders priced more aggressively than the Market Maker Peg Order while not adding an additional level of complexity by requiring Market Makers to establish additional parameters for their Market Maker Peg Orders.

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

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

that the Market Maker Peg Order is the NBBO. Rather, the Exchange will only adjust the market Maker Peg Order when there is either a new consolidated last sale or a new NBBO is established by a national securities exchange.

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

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

#### 2. Statutory Basis

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

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

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

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

simplifying the functionality and corresponding complexity of implementation of Market Maker Peg Orders. The Exchange also believes that removing the functionality that would allow a Market Maker to designate a more aggressive offset from the NBBO will result in a continuing benefit to market participants by further simplifying the functionality of Market Maker Peg Orders to include only the functionality necessary for Market Makers to meet their regulatory obligations. The Exchange does not believe that removing this functionality will disincentivize Market Makers from posting more aggressive quotes. Rather, the Exchange believes that, similar to the market maker quoter, Market Makers will use the Market Maker Peg Order to satisfy the Exchange's quoting requirements, while continuing to enter and manage more aggressively priced orders using existing order types.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed changes to the Market Maker Peg Order type functionality will further align the Exchange's functionality with that offered by certain other competing market centers. Specifically, the rule change proposed herein is based on Nasdaq Rule 4751(f)(15) and EDGX Rule 11.5(c)(15).<sup>11</sup> By adopting changes to functionality to align with functionality in place elsewhere, as well as simplifying such

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

functionality, the Exchange believes that it is reducing the potential for confusion amongst market participants.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>13</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 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-2013-022 on the subject line.

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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).

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2013-022. 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 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 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-2013-022 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>

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

Kevin M. O'Neill  
Deputy Secretary

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

## Rules of BATS Exchange, Inc.

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### CHAPTER XI. TRADING RULES

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#### 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 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]. If, after entry, the Market Maker Peg Order is priced based on the last reported sale from the single plan processor and such Market Maker Peg Order is established as the NBB or NBO, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until either there is a new

consolidated last sale or a new NBB or NBO is established by a national securities exchange. 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.] Market Maker Peg Orders may only be entered by a registered Market Maker. Market Maker Peg Orders will expire at the end of Regular Trading Hours.

(d) – (g) No change.

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