

Required fields are shown with yellow backgrounds and asterisks.

Filing by BATS Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<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 *).

Proposal to amend Rule 11.8 to eliminate the requirement that Competitive Liquidity Providers ("CLPs") have information barriers between the CLP unit and the Member's customer, research, and investment banking business.

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 * Anders Last Name * Franzon
 Title * VP, Associate General Counsel
 E-mail * afranzon@bats.com
 Telephone * (913) 815-7154 Fax (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.

(Title *)

Date 06/20/2013 VP, Associate General Counsel
 By Anders Franzon

(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.

Persona Not Validated - 1364234628553,

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 *

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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 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

Add Remove View

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

Add Remove View

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”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend Rule 11.8 to eliminate the requirement that Competitive Liquidity Providers (“CLPs”) have information barriers between the CLP unit and the Member’s customer, research, and investment banking business because CLPs already are subject to principles-based Exchange rules governing the misuse of nonpublic, material information. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.³

(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

¹ 15 U.S.C. § 78s(b)(1).

² 17 C.F.R. § 240.19b-4.

³ 17 C.F.R. § 240.19b-4(f)(6)(iii).

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 Exchange proposes to eliminate the requirement in subparagraph (c)(6) of Interpretation and Policy .02 to Rule 11.8 that the business unit of a Member acting as a CLP maintain adequate information barriers between the CLP unit and the Member's customer, research, and investment banking business. The Exchange believes that the information barrier requirement is unnecessary because CLPs already are subject to the Exchange's existing principles-based rules governing the misuse of nonpublic, material information. Elimination of the information barrier requirement clarifies that CLPs have the flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market. The Exchange believes that its rules clearly identify prohibited conduct (*i.e.*, misuse of material, non-public information) without further requiring CLPs to establish and maintain specific compliance mechanisms (*e.g.*, information barriers).

Background

The CLP Program and its requirements are set out in Interpretation and Policy .02 to Rule 11.8, the rule that contains the obligations applicable to Exchange Market Makers. A CLP is a Member that electronically enters proprietary orders into the systems and facilities of the Exchange. It is obligated to maintain a bid or an offer at the

NBB or NBO in each assigned security in round lots consistent with the requirements of Interpretation and Policy .02 to Rule 11.8. CLPs are subject to both a daily quoting requirement to be eligible to receive financial incentives and a monthly quoting requirement to remain qualified as a CLP. A CLP that does not meet the CLP daily requirement is not eligible to receive the financial incentives of the CLP Program. A CLP that does not meet the CLP monthly quoting requirements is subject to certain non-regulatory penalties, including the potential to lose its CLP status.

To qualify as a CLP, a Member is required to be a registered Market Maker in good standing with the Exchange, consistent with Rules 11.5 through 11.8. Further, the Exchange requires each Member seeking to qualify as a CLP to have and maintain: (1) adequate technology to support trading through the systems and facilities of the Exchange; (2) one or more unique identifiers that identify to the Exchange CLP trading activity in assigned CLP securities; (3) adequate trading infrastructure to support trading activity, which includes support staff to maintain operational efficiencies in the CLP program and adequate administrative staff to manage the Member's participation in the CLP Program; (4) quoting and volume performance that demonstrates an ability to meet the CLP quoting requirement in each assigned security on a daily and monthly basis; (5) a disciplinary history that is consistent with just and equitable business practices; and (6) with respect to the business unit of the Member acting as a CLP, adequate information barriers between the CLP unit and the Member's customer, research, and investment banking business.

Proposed Rule Change

The Exchange believes it is appropriate to delete subparagraph (c)(6) of Interpretation and Policy .02 to Rule 11.8, which requires that the business unit of the Member acting as a CLP have in place adequate information barriers between the CLP unit and the Member's customer, research, and investment banking business. Instead, the Exchange believes that its rules governing the misuse of material nonpublic information provide an appropriate principles-based approach to preventing the market abuses addressed by subparagraph (c)(6).⁴ The Exchange, therefore, believes that specifically requiring information barriers is unnecessary.

The requirement that exchange market makers, in general, have in place information barriers between a market making unit and other business units traces its roots from concerns that an inappropriate sharing of material, non-public information between the market making unit and other business units of a member could result in the misuse of non-public information, manipulation and other improper trading practices, as well as give rise to conflicts of interest.⁵ One such concern is that a market maker or

⁴ The Exchange adopted these principles-based rules in February 2010. See Securities Exchange Act Release No. 61574 (February 23, 2010), 75 FR 9455 (March 2, 2010).

⁵ See, e.g., Securities Exchange Act Release No. 61336 (Jan. 12, 2010), 75 FR 2908, 2910 (Jan. 19, 2010) (“CBOE Rule 8.91 addresses concerns arising from the potential for the sharing of material non-public information between a DPM’s market making activities and other business activities of the DPM or its affiliates.”); Securities Exchange Act Release No. 58328 (Aug. 7, 2008), 73 FR 48260, 48265 (Aug. 18, 2008) (“The restrictions in current NYSE Rule 98 and related rules are intended to address two primary concerns. The first concern is the potential that an affiliate could unfairly use non-public information, such as information on a specialist’s book or information regularly provided to him by other market participants because of his central role as a primary market specialist. . . . The second concern is that a specialist unit could favor its affiliates by providing orders placed by the affiliate with more favorable executions and by providing useful market information to the affiliated firm (or to its broker on the

affiliate engaging in other business activities might trade on non-public information that the market maker acquired through its market making activities.⁶ Another concern is that a market maker may misuse material, non-public information received from its other business activities, such as trading based on a change in the firm's buy or sell recommendation.⁷

Exchanges have recently adopted principles-based rules intended to prevent such market abuses, rather than specific sets of requirements designed to accomplish the same end, such as the information barriers set out in subparagraph (c)(6). NYSE Arca, Inc. ("NYSE Arca"), Nasdaq Stock Market, LLC ("Nasdaq"), and the Exchange, for example, have amended their rules to eliminate specific information barrier requirements for Members.⁸ Those exchanges have instead enacted principles-based approaches that permit Members to develop and apply their own policies and procedures to, among other things, prohibit and prevent the misuse of material nonpublic information. While the specific policies and procedures are no longer mandated, these principles-based rules are "reasonably designed to ensure compliance with applicable federal securities law and

exchange trading floor) but not to others. In some cases, such conflicts of interest could result in the specialist neglecting his duty to make a fair and orderly market by giving an affiliate's principal or agency orders a more favorable execution."); *see also Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Nonpublic Information*, Securities and Exchange Commission Division of Market Regulation, March 1990.

⁶ See Securities Exchange Act Release No. 61574 (February 23, 2010), 75 FR 9455, 9458 (March 2, 2010).

⁷ Id.

⁸ See Securities Exchange Act Release No. 61574 (February 23, 2010), 75 FR 9455 (March 2, 2010); Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (SR-NYSEArca-2009-78); Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (adopting Nasdaq IM-2110-2; IM-2110-3; IM-2110-4; and Rule 3010).

regulations, and with the rules of the applicable exchange” and have been approved by the Commission.⁹

Consistent with the principles-based approach described above, Exchange Rule 5.5 requires that each Member establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the Member or persons associated with the Member. For purposes of this requirement, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

- a) trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or
- b) trading in a security or related options or other derivative securities, while in possession of material, non-public information concerning imminent transactions in the security or related securities; or
- c) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

⁹ See 75 FR at 9458 (“The Commission believes that, with adequate oversight by the Exchange of its members, elimination of prescriptive information barrier requirements should not reduce the effectiveness of BATS rules requiring Members to establish and maintain systems to supervise the activities of Members, and written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on misuse of material nonpublic information.”)

The Exchange also has several rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members' access to or receipt of material, non-public information. For example, Rule 12.6 prohibits a Member from trading ahead of its customer's limit orders. Rule 12.13 prohibits a Member from establishing an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security. Rule 5.1 requires each Member to (i) establish, maintain, and enforce written procedures that will enable it to supervise properly the activities of associated persons; and (ii) establish, maintain, and enforce written procedures to assure associated persons comply with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules.

The elimination of the information barrier requirements in the CLP Program would allow CLPs to tailor their policies and procedures with respect to the handling of material, non-public information as appropriate to reflect their business models and activities, and to adapt to changes in such models, activities, and the securities market in general.¹⁰ Consistent with the practices of other national securities exchanges, the Exchange, therefore, proposes to eliminate the information barrier requirement set out in subparagraph (c)(6) of Interpretation and Policy .02 to Rule 11.8. The Exchange believes

¹⁰ While information barriers are not specifically required under the Exchange's rules, a CLP's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.

that this approach will foster a fair and orderly marketplace without being overly burdensome to its Members.

By amending its rules in accordance with this proposal, the Exchange reinforces a regulatory structure that clearly prohibits certain conduct (*e.g.*, misuse of material, non-public information pursuant to Rule 5.5) without further requiring Members to establish and maintain specific compliance mechanisms (*e.g.*, information barriers). The Exchange believes that the approach proposed herein is consistent with Nasdaq and NYSE Arca's respective structures. Importantly, like Nasdaq and NYSE Arca, market makers registered with BATS and other firms that are Members of BATS that trade for their own accounts do not have any advantages regarding relevant trading information provided by the Exchange, either at, or prior to, the point of execution vis-à-vis other market participants. Accordingly, the Exchange believes that its procedures based approach is reasonable.

Pursuant to this proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In addition, in the context of approving the proposal by NYSE Arca, the Commission stated that, "while information barriers are not specifically required under the proposal, a [firm's] business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would

be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.”¹¹

(b) Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 Exchange believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to CLPs the type of conduct that is prohibited by the Exchange. Thus, while the proposal eliminates prescriptive information barrier requirements, CLPs will remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, nonpublic information. The Exchange also believes the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and national market system because the proposal will allow CLPs to utilize a flexible, principles-based approach to adapt their policies and procedures as

¹¹ See Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR at 46275.

¹² 15 U.S.C. § 78f(b).

¹³ 15 U.S.C. § 78f(b)(5).

appropriate to reflect their business models, business activities, and the securities markets at a given point in time.

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 Exchange believes that the proposal will enhance competition by allowing CLPs to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon its Members.

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 believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)¹⁴ of the Act and Rule

¹⁴ 15 U.S.C. § 78s(b)(3)(A)

19b-4(f)(6)(iii) thereunder¹⁵ because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

The Exchange believes that its rule change proposal is appropriate for filing on an immediately effective basis under paragraph (f)(6) of Rule 19b-4. In particular, the Exchange believes that this proposal is non-controversial and eligible to become effective immediately because it removes a specifically prescribed information barrier requirement and instead requires CLPs to abide by principles-based rules previously approved by the Commission. Specifically, the proposal is designed to allow CLPs to adapt their policies and procedures as appropriate to reflect their business models, business activities, and the securities markets at a given point in time while still ensuring compliance with applicable securities law and regulations, and with applicable Exchange rules. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.¹⁶

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 implement the proposal immediately. Such waiver is appropriate to provide clarity to CLPs that their compliance with the

¹⁵ 17 C.F.R. § 240.19b-4(f)(6)(iii).

¹⁶ Id.

principles-based Exchange rules regarding the misuse of material, nonpublic information is acceptable without mandating a particular approach in order to abide by such rules.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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 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

Not applicable.

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.

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-2013-037)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend the Requirements of the Competitive Liquidity Provider Program.

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 20, 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, 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 filed a proposal to amend Rule 11.8 to eliminate the requirement that Competitive Liquidity Providers (“CLPs”) have information barriers between the CLP unit and the Member’s customer, research, and investment banking business because CLPs already are subject to principles-based Exchange rules governing the misuse of nonpublic, material information.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange proposes to eliminate the requirement in subparagraph (c)(6) of Interpretation and Policy .02 to Rule 11.8 that the business unit of a Member acting as a CLP maintain adequate information barriers between the CLP unit and the Member's customer, research, and investment banking business. The Exchange believes that the information barrier requirement is unnecessary because CLPs already are subject to the Exchange's existing principles-based rules governing the misuse of nonpublic, material information. Elimination of the information barrier requirement clarifies that CLPs have the flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market. The Exchange believes that its rules clearly identify prohibited conduct (*i.e.*, misuse of material, non-public information) without further requiring CLPs to establish and maintain specific compliance mechanisms (*e.g.*, information barriers).

Background

The CLP Program and its requirements are set out in Interpretation and Policy .02 to Rule 11.8, the rule that contains the obligations applicable to Exchange Market

Makers. A CLP is a Member that electronically enters proprietary orders into the systems and facilities of the Exchange. It is obligated to maintain a bid or an offer at the NBB or NBO in each assigned security in round lots consistent with the requirements of Interpretation and Policy .02 to Rule 11.8. CLPs are subject to both a daily quoting requirement to be eligible to receive financial incentives and a monthly quoting requirement to remain qualified as a CLP. A CLP that does not meet the CLP daily requirement is not eligible to receive the financial incentives of the CLP Program. A CLP that does not meet the CLP monthly quoting requirements is subject to certain non-regulatory penalties, including the potential to lose its CLP status.

To qualify as a CLP, a Member is required to be a registered Market Maker in good standing with the Exchange, consistent with Rules 11.5 through 11.8. Further, the Exchange requires each Member seeking to qualify as a CLP to have and maintain: (1) adequate technology to support trading through the systems and facilities of the Exchange; (2) one or more unique identifiers that identify to the Exchange CLP trading activity in assigned CLP securities; (3) adequate trading infrastructure to support trading activity, which includes support staff to maintain operational efficiencies in the CLP program and adequate administrative staff to manage the Member's participation in the CLP Program; (4) quoting and volume performance that demonstrates an ability to meet the CLP quoting requirement in each assigned security on a daily and monthly basis; (5) a disciplinary history that is consistent with just and equitable business practices; and (6) with respect to the business unit of the Member acting as a CLP, adequate information barriers between the CLP unit and the Member's customer, research, and investment banking business.

Proposed Rule Change

The Exchange believes it is appropriate to delete subparagraph (c)(6) of Interpretation and Policy .02 to Rule 11.8, which requires that the business unit of the Member acting as a CLP have in place adequate information barriers between the CLP unit and the Member's customer, research, and investment banking business. Instead, the Exchange believes that its rules governing the misuse of material nonpublic information provide an appropriate principles-based approach to preventing the market abuses addressed by subparagraph (c)(6).³ The Exchange, therefore, believes that specifically requiring information barriers is unnecessary.

The requirement that exchange market makers, in general, have in place information barriers between a market making unit and other business units traces its roots from concerns that an inappropriate sharing of material, non-public information between the market making unit and other business units of a member could result in the misuse of non-public information, manipulation and other improper trading practices, as well as give rise to conflicts of interest.⁴ One such concern is that a market maker or

³ The Exchange adopted these principles-based rules in February 2010. See Securities Exchange Act Release No. 61574 (February 23, 2010), 75 FR 9455 (March 2, 2010).

⁴ See, e.g., Securities Exchange Act Release No. 61336 (Jan. 12, 2010), 75 FR 2908, 2910 (Jan. 19, 2010) ("CBOE Rule 8.91 addresses concerns arising from the potential for the sharing of material non-public information between a DPM's market making activities and other business activities of the DPM or its affiliates."); Securities Exchange Act Release No. 58328 (Aug. 7, 2008), 73 FR 48260, 48265 (Aug. 18, 2008) ("The restrictions in current NYSE Rule 98 and related rules are intended to address two primary concerns. The first concern is the potential that an affiliate could unfairly use non-public information, such as information on a specialist's book or information regularly provided to him by other market participants because of his central role as a primary market specialist. . . . The second concern is that a specialist unit could favor its affiliates

affiliate engaging in other business activities might trade on non-public information that the market maker acquired through its market making activities.⁵ Another concern is that a market maker may misuse material, non-public information received from its other business activities, such as trading based on a change in the firm's buy or sell recommendation.⁶

Exchanges have recently adopted principles-based rules intended to prevent such market abuses, rather than specific sets of requirements designed to accomplish the same end, such as the information barriers set out in subparagraph (c)(6). NYSE Arca, Inc. ("NYSE Arca"), Nasdaq Stock Market, LLC ("Nasdaq"), and the Exchange, for example, have amended their rules to eliminate specific information barrier requirements for Members.⁷ Those exchanges have instead enacted principles-based approaches that permit Members to develop and apply their own policies and procedures to, among other things, prohibit and prevent the misuse of material nonpublic information. While the specific policies and procedures are no longer mandated, these principles-based rules are

by providing orders placed by the affiliate with more favorable executions and by providing useful market information to the affiliated firm (or to its broker on the exchange trading floor) but not to others. In some cases, such conflicts of interest could result in the specialist neglecting his duty to make a fair and orderly market by giving an affiliate's principal or agency orders a more favorable execution."); *see also Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Nonpublic Information*, Securities and Exchange Commission Division of Market Regulation, March 1990.

⁵ See Securities Exchange Act Release No. 61574 (February 23, 2010), 75 FR 9455, 9458 (March 2, 2010).

⁶ Id.

⁷ See Securities Exchange Act Release No. 61574 (February 23, 2010), 75 FR 9455 (March 2, 2010); Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (SR-NYSEArca-2009-78); Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (adopting Nasdaq IM-2110-2; IM-2110-3; IM-2110-4; and Rule 3010).

“reasonably designed to ensure compliance with applicable federal securities law and regulations, and with the rules of the applicable exchange” and have been approved by the Commission.⁸

Consistent with the principles-based approach described above, Exchange Rule 5.5 requires that each Member establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the Member or persons associated with the Member. For purposes of this requirement, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

- a) trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or
- b) trading in a security or related options or other derivative securities, while in possession of material, non-public information concerning imminent transactions in the security or related securities; or
- c) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

⁸ See 75 FR at 9458 (“The Commission believes that, with adequate oversight by the Exchange of its members, elimination of prescriptive information barrier requirements should not reduce the effectiveness of BATS rules requiring Members to establish and maintain systems to supervise the activities of Members, and written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on misuse of material nonpublic information.”)

The Exchange also has several rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members' access to or receipt of material, non-public information. For example, Rule 12.6 prohibits a Member from trading ahead of its customer's limit orders. Rule 12.13 prohibits a Member from establishing an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security. Rule 5.1 requires each Member to (i) establish, maintain, and enforce written procedures that will enable it to supervise properly the activities of associated persons; and (ii) establish, maintain, and enforce written procedures to assure associated persons comply with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules.

The elimination of the information barrier requirements in the CLP Program would allow CLPs to tailor their policies and procedures with respect to the handling of material, non-public information as appropriate to reflect their business models and activities, and to adapt to changes in such models, activities, and the securities market in general.⁹ Consistent with the practices of other national securities exchanges, the Exchange, therefore, proposes to eliminate the information barrier requirement set out in subparagraph (c)(6) of Interpretation and Policy .02 to Rule 11.8. The Exchange believes

⁹ While information barriers are not specifically required under the Exchange's rules, a CLP's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.

that this approach will foster a fair and orderly marketplace without being overly burdensome to its Members.

By amending its rules in accordance with this proposal, the Exchange reinforces a regulatory structure that clearly prohibits certain conduct (*e.g.*, misuse of material, non-public information pursuant to Rule 5.5) without further requiring Members to establish and maintain specific compliance mechanisms (*e.g.*, information barriers). The Exchange believes that the approach proposed herein is consistent with Nasdaq and NYSE Arca's respective structures. Importantly, like Nasdaq and NYSE Arca, market makers registered with BATS and other firms that are Members of BATS that trade for their own accounts do not have any advantages regarding relevant trading information provided by the Exchange, either at, or prior to, the point of execution vis-à-vis other market participants. Accordingly, the Exchange believes that its procedures based approach is reasonable.

Pursuant to this proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In addition, in the context of approving the proposal by NYSE Arca, the Commission stated that, "while information barriers are not specifically required under the proposal, a [firm's] business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would

be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.”¹⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 Exchange believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to CLPs the type of conduct that is prohibited by the Exchange. Thus, while the proposal eliminates prescriptive information barrier requirements, CLPs will remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, nonpublic information. The Exchange also believes the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and national market system because the proposal will allow CLPs to utilize a flexible, principles-based approach to adapt their policies and procedures as

¹⁰ See Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR at 46275.

¹¹ 15 U.S.C. § 78f(b).

¹² 15 U.S.C. § 78f(b)(5).

appropriate to reflect their business models, business activities, and the securities markets at a given point in time.

(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 Exchange believes that the proposal will enhance competition by allowing CLPs to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon its Members.

(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 Act¹³ and paragraph (f) of Rule 19b-4 thereunder.¹⁴ 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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f).

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. Please include File No. SR-BATS-2013-037 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-2013-037. 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-2013-037 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

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

Rules of BATS Exchange, Inc.

CHAPTER XI. TRADING RULES

Rule 11.8. Obligations of Market Makers

(a)-(e) (No changes.)

Interpretations and Policies

.01 (No changes.)

.02 Competitive Liquidity Provider Program

(a)-(b) (No changes.)

(c) *Qualifications of a CLP.* To qualify as a CLP, a Member must be a registered Market Maker in good standing with the Exchange consistent with Rules 11.5 through 11.8 and must have:

(1)-(3) (No changes.)

(4) Quoting and volume performance that demonstrates an ability to meet the CLP quoting requirement in each assigned security on a daily and monthly basis; and

(5) A disciplinary history that is consistent with just and equitable business practices, [; and

(6) The business unit of the Member acting as a CLP must have in place adequate information barriers between the CLP unit and the Member's customer, research and investment banking business.]

(d)-(k) (No changes.)
