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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66034; File No. SR-BATS-2011-51)

December 22, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Implement a 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 December 16, 2011, 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 filed with the Commission a proposal to adopt new Interpretation and Policy .02 to Rule 11.8 to implement a Competitive Liquidity Provider (“CLP”) program (the “CLP Program”) to incent competitive and aggressive quoting by market makers registered with the Exchange (“Market Makers”) in Exchange-listed securities.

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

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

Background

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.³ In connection with the commencement of its program for listing companies on the Exchange, the Exchange proposes to adopt rules to operate a program to incentivize certain market makers registered with the Exchange as Competitive Liquidity Providers ("CLPs") to enhance liquidity on the Exchange in securities listed on the Exchange (the "Competitive Liquidity Provider Program" or "CLP Program"). The Exchange intends to file a proposal to adopt the financial incentives for the Competitive Liquidity Provider Program through a separate filing.

By establishing this new class of market participant, the Exchange is seeking to provide incentives for quoting and to add competition to the existing group of liquidity providers. By

³ See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011).

requiring CLPs to quote at the National Best Bid (“NBB”) or the National Best Offer (“NBO”) a percentage of the regular trading day in their assigned securities in order to qualify for financial incentives, the Exchange is rewarding aggressive liquidity providers in the market. The Exchange believes that this rebate program will encourage the additional utilization of, and interaction with, the Exchange and provide customers with a premier venue for price discovery, liquidity, competitive quotes and price improvement.

The Exchange proposes to adopt the Competitive Liquidity Provider Program as set forth in a new Interpretation and Policy to Rule 11.8, which contains the obligations applicable to Exchange Market Makers. A Competitive Liquidity Provider will be a Member that electronically enters proprietary orders into the systems and facilities of the Exchange and 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 new Interpretation and Policy .02 to Rule 11.8. As proposed, CLPs will be subject to both a daily quoting requirement in order to be eligible to receive financial incentives and a monthly quoting requirement in order to remain qualified as a CLP. A CLP that does not meet the CLP daily quoting requirement will not be eligible to receive the financial incentives of the CLP Program. A CLP that does not meet the CLP monthly quoting requirements will be subject to certain other non-regulatory penalties, including the potential to lose its CLP status.

Qualifications of a CLP

To qualify as a CLP, a Member will be required to be a registered Market Maker in good standing with the Exchange consistent with Rules 11.5 through 11.8. Further, the Exchange will require each Member seeking to qualify as a CLP to have and maintain: (1) adequate technology to support electronic 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;⁴ (3) adequate trading infrastructure to support CLP 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) 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.

Securities Eligible for the CLP

Any Exchange-listed security that is listed on the Exchange pursuant to Rule 14.8 (relating to Tier I securities), Rule 14.9 (relating to Tier II securities) or Rule 14.11 (relating to exchange traded funds and other exchange traded products (collectively, "ETPs")) shall be eligible for the CLP Program unless and until such security has had a consolidated average daily volume ("CADV") of equal to or greater than 2 million shares for two (2) consecutive calendar months during the first two (2) years the security is subject to the CLP Program; or (2) has been subject to the CLP Program for two (2) years. Thus, the CLP Program is designed to encourage support of Exchange-listed securities during their period of initial listing on the Exchange, when the security needs to develop an active trading market in order to succeed. To avoid ETP sponsors from being dissuaded from initially listing ETPs on the Exchange, the Exchange

⁴ As proposed, a Member may not use such unique identifiers for trading activity at the Exchange in assigned CLP securities that is not CLP trading activity, but may use the same unique identifiers for trading activity in securities not assigned to a CLP. If a Member does not identify to the Exchange the unique identifier to be used for CLP trading activity, the Member will not receive credit for such CLP trading.

proposes to permit ETPs that are initially listed on the Exchange to remain in the CLP Program for six months regardless of the ETP's CADV. CADV will be measured by statistics provided through the consolidated tape plans.

Application Process

To become a CLP, a Member must submit a CLP application form with all supporting documentation to the Exchange. As is currently the case for membership applications to join the Exchange and applications to register as market makers on the Exchange, Exchange personnel in the Exchange's membership department will process such applications. Exchange personnel will determine whether an applicant is qualified to become a CLP based on the qualifications described above. After an applicant submits a CLP application to the Exchange, with supporting documentation, the Exchange shall notify the applicant Member of its decision. If an applicant is approved by the Exchange to receive CLP status, such applicant must establish connectivity with relevant Exchange systems before such applicant will be permitted to trade as a CLP on the Exchange. In the event an applicant is disapproved by the Exchange, such applicant may seek review under Chapter X of the Exchange's Rules governing adverse action and/or reapply for CLP status at least three (3) calendar months following the month in which the applicant received the disapproval notice from the Exchange. Chapter X of the Exchange's Rules provides any persons who are or are about to be aggrieved by an adverse action taken by the Exchange with a process to apply for an opportunity to be heard and to have the complained of action reviewed.

Voluntary Withdrawal of CLP Status

A CLP may withdraw from the status of a CLP by giving notice to the Exchange. Such withdrawal shall become effective when those securities assigned to the withdrawing CLP are

reassigned to another CLP. After the Exchange receives the notice of withdrawal from the withdrawing CLP, the Exchange will reassign such securities as soon as practicable but no later than thirty (30) days after the date said notice is received by the Exchange. In the event the reassignment of securities takes longer than the 30-day period, the withdrawing CLP will have no obligations under this Interpretation and Policy .02 and will not be held responsible for any matters concerning its previously assigned CLP securities upon termination of this 30-day period.

CLP Quoting Requirements

The Exchange will measure the performance of a CLP in assigned securities by calculating Size Event Tests (“SETs”) during Regular Trading Hours on every day on which the Exchange is open for business. The Exchange will measure each CLP’s quoted size at the NBB and NBO at least once per second to determine SETs. The CLP with the greatest aggregate size at the NBB and NBO at each SET will be considered to have a “winning SET.”

As noted above, the Exchange proposes to adopt both daily and monthly quoting requirements.

First, a CLP must have at least 10% of the winning SETs on any trading day in order to meet its daily quoting requirement and to be eligible for any daily quotation rebate provided by the Exchange (each such CLP, an “Eligible CLP”). Eligible CLPs will be ranked according to the number of winning SETs each trading day, and only the Eligible CLP ranked number one, and in some cases the Eligible CLP ranked number two, will receive the daily rebate. In addition to providing a daily rebate to CLPs that have the highest demonstrated size at the NBB and NBO during the trading day, as measured by the Exchange through the calculation of SETs, the Exchange also plans to propose incentives to by providing special pricing for executions that

occur in any auction operated by the Exchange pursuant to Rule 11.23. As noted above, the Exchange intends to separately propose the specific details regarding the financial incentives applicable to the CLP Program. The financial incentives adopted by the Exchange will specify the amount and allocation of rebates provided to CLPs as well as the parameters for receiving special pricing in Exchange auctions.

Second, a CLP must be quoting at the NBB or the NBO 10% of the time the Exchange calculates SETs to meet its monthly quoting requirement.

For purposes of calculating whether a CLP is in compliance with its CLP quoting requirements, the CLP must post displayed liquidity in round lots in its assigned securities at the NBB or the NBO. A CLP may post non-displayed liquidity; however, such liquidity will not be counted as credit towards the CLP quoting requirements. The CLP shall not be subject to any minimum or maximum quoting size requirement in assigned securities apart from the requirement that an order be for at least one round lot. The CLP quoting requirements will be measured by utilizing the unique identifiers that the Member has identified for CLP trading activity.

CLPs may only enter orders electronically directly into Exchange systems and facilities designated for this purpose. All CLP orders must only be for the proprietary account of the CLP Member.

Assignment of Securities

The Exchange, in its discretion, will assign to the CLP one or more securities consisting of Exchange-listed securities for CLP trading purposes. The Exchange shall determine the number of Exchange-listed securities within the group of securities assigned to each CLP. The

Exchange, in its discretion, will assign one (1) or more CLPs to each security subject to the CLP Program, depending upon the trading activity of the security. The Exchange will restrict the CLPs assigned to any newly issued security that is listed on the Exchange pursuant to Rule 14.11, which relates to ETPs, to those Members that have actively participated in the development or funding of such product. This restriction will remain in effect for six (6) months following the initial offering of the ETP on the Exchange after which time there will be no limitation on the Members that can be assigned as CLPs for such a product.

Non-Regulatory Penalties

If a CLP fails to meet the CLP quoting requirements, the Exchange may impose certain non-regulatory penalties. First, if, during Regular Trading Hours on any day on which the Exchange is open for business, fails to meet its daily quoting requirement by failing to have at least 10% of the winning SETs for that trading day, the CLP will not be eligible to receive a financial rebate for that day's quoting activity in that particular assigned security. Second, if a CLP fails to meet its monthly quoting requirement for three (3) consecutive months in any assigned security, the CLP will be at risk of losing its CLP status. Thus, the Exchange may, in its discretion, take the following non-regulatory actions: (i) revoke the assignment of the affected security(ies) and/or one or more additional unaffected securities; or (ii) disqualify a Member's status as a CLP.

The Exchange shall determine if and when a Member is disqualified from its status as a CLP. One (1) calendar month prior to any such determination, the Exchange will notify the CLP of such impending disqualification in writing. When disqualification determinations are made, the Exchange will provide a disqualification notice to the Member informing such Member that it has been disqualified as a CLP. In the event a Member is disqualified from its status as a CLP,

such Member may re-apply for CLP status. Such application process shall occur at least three (3) calendar months following the month in which such Member received its disapproval or disqualification notice. Further, in the event a Member is determined to be ineligible for a financial rebate for failure to meet its daily quoting obligation or is disqualified from its status as a CLP, such Member may seek review under Chapter X of the Exchange's Rules governing adverse action. As noted above, Chapter X of the Exchange's Rules provides any persons who are or are about to be aggrieved by an adverse action taken by the Exchange with a process to apply for an opportunity to be heard and to have the complained of action reviewed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁵ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,⁶ because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. At the outset, the Exchange believes that the proposal is not unfairly discriminatory due to the fact that registration as an Exchange Market Maker, and, in turn, as a CLP, is equally available to all Members that satisfy the requirements of Rule 11.8. The Exchange believes that the CLP Program will encourage the development of new financial products, provide a better trading environment for investors in Exchange-listed securities, and generally encourage greater competition between listing venues.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

As proposed, the CLP Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for Exchange-listed securities. The Exchange is launching its listings business at a time in which there are two dominant primary listing venues, the New York Stock Exchange and Nasdaq. The Exchange believes that the proposed change would increase competition by incenting Exchange Market Makers to register as CLPs, which will enhance the quality of quoting in Exchange-listed securities and help to reduce imbalances in Exchange auctions, and will further assist the Exchange to develop an alternative to Nasdaq and the New York Stock Exchange for a company seeking to list its securities. Accordingly, the Exchange believes that the proposal will compliment the Exchange's program for listing securities on the Exchange, which will, in turn, provide companies with another option for raising capital in the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.⁷

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

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

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or

⁷ 15 U.S.C. 78f(b)(5).

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2011-51 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR- BATS-2011-51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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 publicly available. All submissions should refer to File Number SR- BATS-2011-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill
Deputy Secretary

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⁸ 17 CFR 200.30-3(a)(12).