

methods for reporting the required data; a detailed estimate of the costs to plan sponsors and to members of the plan sponsors of creating, implementing, and maintaining the consolidated audit trail (including issues relating to funding of the consolidated audit trail); an analysis of the impact on competition, efficiency and capital formation of creating, implementing and maintaining the NMS plan; and a discussion of any reasonable alternative approaches that the plan sponsors considered including a description of any such alternative approach, the relative advantages and disadvantages of each such alternative, including an assessment of the alternative's costs and benefits, and the basis upon which the plan sponsors selected the approach in the NMS Plan submitted.¹⁶

Additionally, given that the planned RFP process as described in the Request Letter is expected to include multiple solicitations for public comment, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to provide the SROs with additional time. This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission. In granting the SROs' request, the Commission expects the SROs to work diligently to adhere to the milestones specified by the SROs in the Request Letter. The Commission also expects the SROs to utilize the additional time to prepare a detailed and complete NMS plan for the Commission and the public to consider.

Accordingly, *it is hereby ordered*, pursuant to Section 36 of the Exchange Act,¹⁷ that the SROs are temporarily exempted from the deadline for submitting the NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository contained in Rule 613(a)(1) until December 6, 2013.

By the Commission.

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69038; File No. SR-BATS-2013-016]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Modify the BATS Options Market Maker Obligation Rule

March 5, 2013.

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 March 1, 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 Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal for the BATS Options Market ("BATS Options") to amend Rule 22.6(d) in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or "Plan").⁵ The Exchange is also proposing to amend Rule 22.6(d) to suspend the obligation of market makers registered with BATS ("Market Makers") to enter continuous bids and offers during a halt, suspension, or pause in trading of the underlying security (collectively, a "Trading Halt").

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently requires Market Makers to enter continuous bids and offers for the options series to which it is registered in at least 75% of the options series in which the Market Maker is registered. The purpose of this proposed rule change is to amend BATS Rule 22.6(d) to suspend a Market Maker's continuous quoting obligations when the underlying security is subject to a "Limit State" or "Straddle State" as defined Limit in the Up-Limit Down Plan and during a Trading Halt.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan. Under the Plan, a Limit State will be declared if the national best offer equals the lower price band and does not cross the national best bid, or the national best bid equals the upper price band and does not cross the national best offer. A Straddle State is when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility. Accordingly, when the underlying security is in a Limit State or Straddle State, there will not be a reliable price for the security to serve as a benchmark for the price of the related option. While, in theory, the liquidity provided by requiring Market Makers to continue to quote during a Limit or Straddle State could help to stabilize a volatile market, without a reliable benchmark for pricing an option, Market Makers would likely respond to the uncertainty by entering very wide

¹⁶ See Rule 613(a)(1).

¹⁷ 15 U.S.C. 78mm.

quotes, which would not provide any additional stability and could potentially lead to additional uncertainty. As such, the Exchange is proposing to eliminate the continuous quoting requirements of Rule 22.6(d) when the underlying security is in a Limit State or Straddle state. Specifically, the Exchange is proposing to exclude the time during which the underlying security is in a Limit State or Straddle state when evaluating whether a Market Maker has met the continuous quoting requirements of Rule 22.6(d). The Exchange believes that this relief will help to maintain a fair and efficient marketplace for the execution of options.

The Exchange is also proposing to amend Rule 22.6(d) to provide an exception to the continuous quoting requirements for Market Makers during a Trading Halt. Currently, the Exchange does not provide an exemption for its requirement that a Market Maker enter continuous bids and offers for the options series to which it is registered. Much like when an underlying security is in a Limit State or a Straddle State, there is no reliable price during a Trading Halt to serve as a benchmark for the price of the related option because the only available price is the last trade prior to the Trading Halt. Based on this concern and for the same reasons discussed above, the Exchange is proposing to exempt Market Makers from existing continuous quoting requirements during a Trading Halt.

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.⁶ In particular, the proposal is consistent with Section 6(b)(5) of the Act,⁷ because it would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest. The Exchange believes that exempting Market Makers from the continuous quoting requirements on BATS Options when the underlying security is in a Limit State or Straddle State or a Trading Halt will help to prevent executions that might occur at prices that have not been reliably formed. Further, the proposed changes will allow Market Makers to enter

orders only where the Market Maker is confident in the price of the option, rather than on a continuous basis in all series in which the Market Maker is registered, which the Exchange believes will help to minimize uncertainty during a volatile market. The Exchange also believes that these changes will help to incentivize participants registered with BATS as Market Makers to continue to act as Market Makers, rather than potentially causing Market Makers to de-register. The Exchange also believes that this change will help to protect all investors from executions at prices that are not based on a reliable benchmark for the price of an option during times of significant volatility, and thus, believes the proposal to be consistent with the protection of investors and the public interest.

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 other options exchanges are proposing to suspend a market maker's quoting obligations when the underlying security is subject to a Limit State or Straddle State in connection with the Limit Up-Limit Down Plan consistent with the Exchange's handling proposed by this filing.

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 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 such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the 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 email to rule-comments@sec.gov. Please include File No. SR-BATS-2013-016 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-2013-016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will 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-2013-016 and should be submitted on or before April 2, 2013.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69044; File No. SR-ICEEU-2013-03]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Issuance and Order Granting Accelerated Approval of Proposed Rule Change Relating to Clearing of Foreign Exchange Transactions

March 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 28, 2013, ICE Clear Europe Limited ("ICE Clear Europe") 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 primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The purpose of the proposed rule change is to implement new Part 17 of ICE Clear Europe's Rules, new FX Procedures, and new OTC FX Product Guide and Published Terms to facilitate the clearing of foreign exchange ("foreign exchange" or "FX") transactions, initially non-deliverable FX forward transactions.

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

In its filing with the Commission, ICE Clear Europe 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 III below. ICE Clear Europe has prepared summaries,

set forth in sections A, B, and C below, of the most significant aspects of these statements.³

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

ICE Clear Europe submits new Part 17 of its Rules, new FX Procedures and new OTC FX Product Guide and Published Terms to facilitate the clearing of foreign exchange transactions, initially non-deliverable FX forward transactions. The other proposed changes in the Rules reflect conforming changes to definitions and related provisions and other drafting clarifications, and do not affect the substance of the Rules.

The amendments adopt a new Part 17 of the Rules, which provides for the basic terms and conditions on which foreign exchange transactions will be cleared. Initially, ICE Clear Europe proposes to clear a series of contracts that are non-deliverable forward ("NDF") transactions in the following currency pairs: USD/Brazilian Real, USD/Korean Won, USD/China Yuan, USD/Indian Rupee, USD/Indonesian Rupiah, USD/Chilean Peso and USD/Russian Ruble. The contract specifications for the cleared NDF transactions are set forth in the new FX Procedures and related OTC FX Product Guide and Published Terms.

The amendments also provide for the establishment of a separate guaranty fund for FX transactions (including a separate assessment right applicable to Clearing Members that clear FX transactions ("FX Clearing Members")), to be applied to losses resulting from the default of an FX Clearing Member. ICE Clear Europe will also have a limited right of assessment, as set forth in Part 11 of the ICE Clear Europe Rules, against non-defaulting FX Clearing Members in an amount up to two times their required FX guaranty fund contribution as in effect prior to the relevant default.

Specifically, Rule 1701 sets forth definitions related to the clearing of FX Contracts. Rule 1702 addresses the determination of settlement prices for FX Contracts. Rule 1703 provides for the payment of interest on mark-to-market margin for FX Contracts. Rule 1704 provides for the separate treatment of reference currency buyer and seller positions for each category of proprietary or customer account. New Rule 1705 addresses the settlement of FX contracts. Rules 1706 and 1707

establish an FX default committee to address defaults by FX Clearing Members and default related policies and procedures. Rule 1708 addresses permitted use of certain FX-related data. Rule 1709 establishes certain requirements for guarantors of FX Clearing Members. Rule 1710 sets out procedures for the termination of FX clearing membership.

Conforming and related amendments are also proposed to other parts of the ICE Clear Europe Rules, including changes to definitions in Part 1 of the ICE Clear Europe Rules. Part 2 of the Rules has been amended to address the inclusion of FX Clearing Members (including provisions relating to the termination of FX Clearing Member status). Proposed amendments to Parts 3 and 4 of the Rules contain various conforming and clarifying changes, and Rule 406 contains special rules relating to the netting of FX Contracts. Part 5 of the Rules has been amended to address margin for FX Contracts. Part 9 of the Rules has been revised to address defaults of FX Clearing Members and close-out of FX Contracts on default, in addition to various clarifying changes. Part 11 of the Rules has been amended to reflect the creation of a separate FX guaranty fund and to provide for contributions to and use of the FX guaranty fund in various default scenarios. Revised Part 11 also addresses ICE Clear Europe's power of assessment of additional FX guaranty fund contributions from FX Clearing Members.

ICE Clear Europe is also adopting a set of FX Procedures, which address certain additional issues for FX Contracts and FX Clearing Members, including (i) additional membership standards for FX Clearing Members (beyond those set out generally in the Rules), (ii) procedures for submission and acceptance of FX Contracts for clearing, (iii) provision of FX Contract pricing data by FX Clearing Members to ICE Clear Europe, (iv) settlement procedures for FX Contracts, (v) determination of market prices for FX Contracts and interest on mark-to-market margin and (vi) FX default committee procedures. The contract specifications and terms for FX Contracts are set out in the FX Procedures together with the OTC FX Product Guide and Published Terms for FX Contracts.

As part of the rule change, ICE Clear Europe will establish a separate FX Risk Committee with up to 15 members, including up to 10 representatives from clearing members of ICE Clear Europe.

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission has modified the text of the summaries prepared by ICE Clear Europe.