

in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As discussed above, FINRA proposed to amend Rule 5110(a)(5) to revise the definition of “participation” to exclude from the definition’s scope advisory or consulting services provided to the issuer by an independent financial adviser. The Commission believes that this revision will reduce the burden on independent financial advisers while not compromising investor protection, as the harms sought to be prevented by Rule 5110 are not implicated where advisory or consulting services are being carried out by an independent party such as an independent financial adviser.

With regard to FINRA’s proposal to eliminate the lock-up restrictions for certain securities, the Commission believes that it is appropriate to treat shares received in an acquisition or conversion to prevent dilution during the 180-day review period consistently with the securities on which their acquisition or conversion was based. The amendment should further the goal of preventing fraudulent and manipulative acts and practices and protecting investors and the public interest, especially in light of the continued application of the protections described in Rule 5110(d)(5)(D)(ii)–(iv).

With regard to FINRA’s proposal to limit the scope of the disclosure requirement contained in Rule 5110(b)(6)(A)(iii) by specifying that the rule applies to “any participating member,” rather than simply “any member,” the Commission believes that this proposal should reduce the burden on members not participating in an offering who were required to report information regarding the acquisition of the issuer’s unregistered equity securities to FINRA.

In addition, the Commission believes that FINRA’s proposal to amend the scope of the definition of “control” in Rule 5121(f)(6) is appropriate because it tailors the requirement to report information to eliminate an unnecessary burden on members while also maintaining the rule’s efficacy.

The Commission further believes that FINRA, through its response, has adequately addressed the concerns expressed in Rothwell’s letter by providing additional guidance and clarification on its proposed changes to Rules 5110 and 5121 and further explaining the interaction of this proposal with other FINRA Rules.

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵⁵ that the proposed rule change (SR-FINRA-2014-003) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

Kevin M. O’Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72018; File No. SR-NYSEArca-2014-40]

Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rules Governing Letters of Guarantee and Letters of Authorization

April 25, 2014.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b-4 thereunder,³ notice is hereby given that on April 21, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange rules governing Letters of Guarantee and Letters of Authorization. The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

⁵⁵ 15 U.S.C. 78s(b)(2).

⁵⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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 self-regulatory organization 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 those 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

As further described below, each OTP Holder acting as either a Market Maker or Floor Broker on NYSE Arca currently is required to submit to the Exchange a Letter of Guarantee or Letter of Authorization for its trading activities from a Clearing Member.⁴ Typically, by a Letter of Guarantee, the Clearing Member accepts financial responsibility for all Exchange transactions of a Market Maker⁵ and, by a Letter of Authorization, a Clearing Member is responsible for the clearance of the Exchange transactions of a Floor Broker.⁶

The purpose of the proposal is to amend various Exchange rules governing Letters of Guarantee and Authorization to:

- Provide that any written notice of revocation of a Letter of Guarantee or Letter of Authorization will become effective upon processing by the Exchange.
- Give the Exchange the ability to prevent access and connectivity if a Market Maker or Floor Broker is subject to written notice of revocation.

Changes to Rule 6.36—Letters of Guarantee

Rule 6.36(c) states that a Letter of Guarantee filed with the Exchange shall remain in effect until a final written notice of revocation has been filed with the Exchange. The current rule sets forth a time period for the effectiveness of a revocation to take place. However the Exchange does not believe that a

⁴ A Clearing Member is an Exchange OTP Firm or OTP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation. See Rule 6.1(b)(3).

⁵ See Rule 6.36(a).

⁶ See Rule 6.45(a).

specified timeframe is necessary. Because the Exchange can process such revocations at any time after receipt, the Exchange proposes to amend Rule 6.36(c) to provide that notices of revocation shall become effective as soon as the Exchange is able to process the revocation. The Exchange notes that the proposed rule change is consistent with the rules governing the processing of the revocation of a Letter of Guarantee on the Chicago Board Options Exchange ("CBOE").⁷

Once a notice of revocation has been processed, a Market Maker no longer has in effect a Letter of Guarantee, as required by Rule 6.36(a). If a Market Maker no longer has a valid Letter of Guarantee, that Market Maker presents risk to the marketplace and the Exchange believes it is appropriate to terminate access and connectivity to the Exchange in these situations.

Accordingly, the Exchange proposes to further amend Rule 6.36(c) by stating that upon the effectiveness of a notice of revocation, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Market Maker. Preventing access and connectivity by a Market Maker who does not have a valid Letter of Guarantee is consistent with similar procedures of the CBOE.⁸

Changes to Rule 6.45—Letters of Authorization

Rule 6.45(c) states that a Letter of Authorization filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the Exchange. The current rule sets forth a time period for the effectiveness of a revocation to take place. However the Exchange does not believe that a specified timeframe is necessary. Because the Exchange can process such revocations at any time after receipt, the Exchange proposes to amend Rule 6.45(c) to provide that a notice of revocation shall become effective as soon as the Exchange is able to process the revocation. The Exchange notes that the proposed rules change is consistent with the rules governing the processing of the revocation of a Letter of Authorization on the CBOE.⁹

Once a notice of revocation has been processed, a Floor Broker no longer has in effect a Letter of Authorization, as required by Rule 6.45(a). If a Floor Broker no longer has a valid Letter of Authorization, that Floor Broker presents risk to the marketplace and the Exchange believes it is appropriate to

terminate access and connectivity to the Exchange in these situations.

Accordingly, the Exchange proposes to further amend Rule 6.45(c) by stating that upon the effectiveness of a notice of revocation, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Floor Broker. Preventing access and connectivity to a Floor Broker who does not have on file an effective Letter of Authorization is consistent with similar procedures of the CBOE.¹⁰

The Exchange also proposes to adopt an additional provision to Rule 6.45(c) stating that final revocation shall in no way relieve a Clearing OTP Holder or OTP Firm of responsibility for clearing transactions effected by a Floor Broker prior to the effectiveness of such final revocation. The Exchange believes that this provision, which currently applies when a Market Maker is subject to a notice of revocation, is equally appropriate in instances when a Floor Broker is subject to a notice of revocation. The Exchange notes that the proposed rule change is consistent with the rules governing the processing of the revocation of a Letter of Authorization on the CBOE.¹¹

The Exchange notes that nothing in existing or proposed rules would prohibit a Market Maker or Floor Broker from seeking to gain access and connectivity to the Exchange once that individual is able to again acquire the required Letter of Guarantee or Letter of Authorization.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Preventing access and connectivity to the Exchange by a Market Maker or Floor Broker subject to a notice of revocation will promote just and equitable principles of trade and serves to protect investors and the public because it prevents trading by a Market Maker or Floor Broker without financial or clearing guarantees for its trading. A

Market Maker or Floor Broker who no longer has a valid Letter of Guarantee or Authorization presents risk to the marketplace and the Exchange believes it is appropriate to prevent access and connectivity to the Exchange in these situations. In addition, making a notice of revocation effective upon processing by the Exchange, instead of being encumbered by a specified time frame, will permit the Exchange to act swiftly to take measures aimed at market integrity and investor protection.

The Exchange believes the proposed rule change is also consistent with the requirements that the rules of an exchange provide a fair procedure for the denial or limitation by an exchange of any person with respect to access to services offered by the Exchange because the Exchange would not prohibit or limit a Floor Broker or Market Maker from seeking to gain access and connectivity to the Exchange once that individual is able to again acquire the required Letter of Guarantee or Letter of Authorization.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes will apply equally to all Floor Brokers and Market Makers and is designed to protect all OTP Holders, OTP Firms and public investors effecting transactions on the Exchange. In addition, the proposed changes will not impose any unnecessary burden on the operation of the Exchange because the changes will allow the Exchange to adopt more efficient procedures for the processing notices of revocation.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii)

⁷ See CBOE Rule 8.5(c).

⁸ See CBOE Rule 3.28(b).

⁹ See CBOE Rule 6.72(c).

¹⁰ *Supra* note 8.

¹¹ *Supra* note 9.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, noting that a waiver of the operative delay will allow the Exchange to promptly adopt and implement new procedures aimed at market integrity and investor protection. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As such, the Commission waives the operative delay and designates the proposed rule change to be operative upon filing.¹⁶

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁷ of the Act to determine whether the proposed rule change should be approved or 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 Number SR-NYSEArca-2014-40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2014-40. 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 at 100 F Street NE., Washington, DC 20549-1090 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 Number SR-NYSEArca-2014-40, and should be submitted on or before May 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72020; File No. SR-BATS-2014-015]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Institute an Incentive Program for Market Makers for BATS Exchange, Inc.

April 25, 2014.

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 April 17, 2014, BATS Exchange, Inc. ("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 a proposal to institute an incentive program for market makers registered with the Exchange ("Market Makers")³ in ETPs⁴ listed on the Exchange (the "LMM Program"). 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.⁵ The Exchange will implement the proposed rule change on a date that will be circulated in a notice from the BATS Trade Desk.⁶ The Exchange also intends to file a proposal to adopt the financial incentives related to the LMM Program through a separate filing.

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.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See BATS Rule 11.5.

⁴ As defined in proposed Rule 11.8(e)(1)(A), ETP means any security listed pursuant to Exchange Rule 14.11.

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ The Exchange will file a separate proposal prior to implementation of the proposed rule change in which it will add the relevant pricing to its fee schedule.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

¹⁸ 17 CFR 200.30-3(a)(12).