

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 the 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-CBOE-2013-087 and should be submitted on or before November 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70696; File No. SR-NYSEMKT-2013-82]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for a Temporary Suspension of Those Aspects of Rules 36.20—Equities and 36.21—Equities That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Due to the Unavailability of Exchange-Provided Cell Phones Beginning on October 10, 2013 Until the Earlier of When Cell Phone Service Is Restored or October 11, 2013

October 16, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 10, 2013, NYSE MKT LLC (the "Exchange" or "NYSE MKT") 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 Substance of the Proposed Rule Change

The Exchange proposes a temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor due to the unavailability of Exchange-provided cell phones beginning on October 10, 2013 until the earlier of when cell phone service is restored or October 11, 2013. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 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

The Exchange proposes to temporarily suspend those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor.<sup>4</sup> As proposed, all other aspects of Rule 36—Equities remain applicable and the temporary suspensions of the applicable Rule 36—Equities requirements are in effect beginning October 10, 2013 when the outage began, and remain in place until the earlier of when phone service is restored

or close of business Friday, October 11, 2013.<sup>5</sup>

On October 10, 2013, the third-party carrier that provides service for the Exchange-provided cell phones experienced an issue that affected Exchange authorized and provided portable phones for Floor brokers. This outage only impacted the service for Exchange authorized and provided portable phones. As a result, all Exchange authorized and provided cell phones were non-operational before the opening of trading on October 10, 2013. The Exchange is working closely with the third-party carrier to restore such cell phone service.

Rules 36.20—Equities and 36.21—Equities govern the type of telephone communications that are approved for Floor brokers. Pursuant to Rule 36.20—Equities, Floor brokers may maintain a telephone line on the Trading Floor and use Exchange authorized and provided portable phones while on the Trading Floor. The use of such Exchange authorized and provided portable phones is governed by Rule 36.21—Equities. Because of the issues with the third-party carrier, all Exchange authorized and provided portable phones are not functional and therefore Floor brokers cannot use the Exchange authorized and provided portable phones. However, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when Exchange-provided cell phones are non-operational, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones.

The Exchange therefore proposes to temporarily suspend the limitations in Rules 36.20—Equities and 36.21—Equities that permit Floor brokers to use only Exchange authorized and provided portable phones so that Floor brokers may also use personal portable phones on the Trading Floor. The Exchange proposes that pursuant to this temporary suspension, Floor brokers must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number.

<sup>5</sup> The Exchange provided Floor brokers with notice of this rule filing, including the applicable recordkeeping and other requirements related to using personal cell phones during the temporary suspension of Rule 36—Equities.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Pursuant to Rule 6A—Equities, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities.

Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor brokers must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority ("FINRA"), on request.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> 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.

In particular, because of issues experienced by a third-party cell phone carrier, Exchange authorized and provided cell phones are not functional. The Exchange believes that the proposed temporary suspensions from those aspects of Rule 36—Equities that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

## 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 Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed change only impacts Floor brokers and has no change in operations for other market participants or other market centers. To the contrary, the Exchange believes that without the proposed relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, thereby placing a burden on the Floor brokers' ability to compete.

## 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 Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Because the 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 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<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter

time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay allows the terms of the relief described herein to be available during the service outage for Exchange-provided cell phones. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>14</sup>

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) of the Act<sup>15</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-82 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-NYSEMKT-2013-82. 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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 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).

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 the 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-NYSEMKT-2013-82 and should be submitted on or before November 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70664; File No. SR-BATS-2013-054]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

October 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 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, II and III below, which Items have been prepared by the Exchange. The Exchange has

designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon 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.

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

###### 1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective October 1, 2013, in order to: (1) Increase the fee to remove liquidity from the Exchange's order book in all securities; (2) modify the tiered rebate structure applicable to adding liquidity to the Exchange's order book in securities priced \$1.00 or above; (3) adopt an additional rebate incentive (subject to average daily volume requirements) for orders that join the national best bid or national best offer

(the "NBBO") when the Exchange is not already at the NBBO ("NBBO Joiner" orders); and (4) make various formatting changes to enhance and simplify the fee schedule.

###### Increase to Fee To Remove Liquidity From the Exchange

The Exchange currently charges \$0.0029 per share for all orders executed on the Exchange that remove liquidity from the Exchange in securities priced \$1.00 per share or above. The Exchange proposes to increase this standard fee to remove liquidity from the Exchange to \$0.0030 per share.

Consistent with the current fee to remove liquidity, the \$0.0030 charge per share for executions that remove liquidity from the Exchange will not apply to executions that remove liquidity in securities priced under \$1.00 per share. The Exchange proposes to increase the fee for such executions from 0.10% of the total dollar value of the execution to 0.30% of the total dollar value of the execution.

###### Modifications to Tiered Rebate Structure for Securities Priced \$1.00 or Above

The Exchange currently operates a tiered pricing structure through which Members can realize higher rebates for adding displayed liquidity. Specifically, the Exchange provides a standard rebate of \$0.0025 per share for orders that add displayed liquidity for Members that do not qualify for a higher rebate based on their volume. The Exchange then provides a rebate of \$0.0027 per share for orders that add displayed liquidity to the Exchange's order book where the Member has an average daily volume ("ADV"), as defined below, equal to or greater than 0.5% but less than 1.0% of average of total consolidated volume ("TCV"), as also defined below. Finally, the Exchange provides a rebate of \$0.0029 per share for orders that add displayed liquidity to the Exchange's order book for any Member that has an ADV equal to or greater than 1.0% of TCV. The Exchange proposes to expand the number of tiers available and to modify the rebates associated with such tiers, as well as the rebates provided to Members not qualifying for tiered pricing.

For purposes of the fee schedule, the definition of ADV is average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis (excluding routed volume).<sup>6</sup> Rather than basing its

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

<sup>6</sup> The Exchange allows affiliated entities to aggregate their order flow for purposes of the Exchange's determination of ADV with respect to