

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 24	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2014 - * 015 Amendment No. (req. for Amendments *)
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Filing by BATS Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

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 \*).

Proposed rule change to institute an incentive program for market makers registered with the Exchange in ETPs listed on the Exchange (the "LMM Program").

**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 \* Christopher Last Name \* Solgan  
 Title \* Regulatory Counsel  
 E-mail \* csolgan@bats.com  
 Telephone \* (201) 942-8321 Fax

**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 04/17/2014  
 By Christopher Solgan  
 (Name \*)  
 Regulatory Counsel  
 csolgan@directedge.com

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.

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**

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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**

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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 Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to institute an incentive program for market makers registered with the Exchange (“Market Makers”)<sup>3</sup> in ETPs<sup>4</sup> 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.<sup>5</sup> The Exchange will implement the proposed rule change on a date that will be circulated in a notice from the BATS Trade Desk.<sup>6</sup> The Exchange also intends to file a proposal to adopt the financial incentives related to the LMM Program through a separate filing.

(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.

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

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

<sup>3</sup> See BATS Rule 11.5.

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 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.

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 February 11, 2014. Exchange staff will advise the Board of Directors of the Exchange of any 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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.<sup>7</sup> Shortly thereafter, the Exchange also received approval to operate a program in which all BATS-listed securities participate that is designed to incentivize certain Market Makers as Competitive Liquidity Providers ("CLPs") to enhance liquidity on the Exchange in such BATS-listed securities (the "CLP Program") by offering daily financial rebates to CLPs based on the size of their *quotes* at the NBBO<sup>8</sup> throughout the day.<sup>9</sup> In order to provide issuers with an additional option for enhancing liquidity in BATS-listed ETPs and as a competitive response to liquidity enhancement programs at other listing exchanges, the

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<sup>7</sup> See Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>8</sup> As defined in Rule 1.5(o), NBBO means the national best bid or offer.

<sup>9</sup> See Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR-BATS-2011-051).

Exchange is proposing to implement an additional program designed to incentivize certain Market Makers that are willing to meet designated performance standards to enhance liquidity on the Exchange in ETPs by providing enhanced rebates to such Market Makers, the LMM Program, for *executions* in BATS-listed ETPs, as further described below. As proposed, the LMM Program is designed to incentivize select Market Makers to enter more aggressive orders in BATS-listed ETPs by providing enhanced rebates for executions in the BATS-listed ETP in which the Market Maker is registered as a lead market maker (a “LMM”) where the LMM meets certain performance measurements designated by the Exchange. As proposed, a BATS-listed ETP that is participating in the CLP Program would not be eligible for participation in the LMM Program until and unless such ETP is no longer participating in the CLP Program. Further, any ETP that is listed on the Exchange after the implementation of the LMM Program will not be eligible for participation in the CLP Program. Prior to the implementation of the LMM Program, the Exchange intends to file a proposal detailing changes to the current CLP Program along with a new supplemental quoting incentive program in which ETPs participating in the LMM program may also participate.

The Exchange is proposing to adopt rules that are similar to those regarding the SEC approved NYSE Arca, Inc. (“Arca”) program for Lead Market Makers<sup>10</sup> (“Arca LMMs”) and The NASDAQ Stock Market LLC (“Nasdaq”) program for Designated

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<sup>10</sup> See Arca Rule 7.24 and NYSE Arca Schedule of Fees and Charges for Exchange Services at [https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse\\_arca\\_marketplace\\_fees\\_\\_for\\_2-1-14.pdf](https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees__for_2-1-14.pdf).

Liquidity Providers (“DLPs”).<sup>11</sup> Under both programs, an Arca LMM for a security listed on Arca or a DLP for a security listed on Nasdaq is required to maintain minimum performance standards with regard to (i) percent of time at NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; (iv) average quoted spread; and (v) in the case of derivative securities listed on Arca, the ability of the Arca LMM to transact in underlying markets. This list, however, is not exhaustive, so Nasdaq (and BATS, as proposed and further discussed below) could apply any additional minimum performance standards, including the ability of a DLP to transact in underlying markets. Additionally, because Arca LMMs and DLPs are required to be registered market makers, they must also meet each respective exchange’s requirements for being a market maker. In return, an Arca LMM receives both enhanced rebates for adding liquidity and reduced fees for removing liquidity and a DLP on Nasdaq receives enhanced rebates for adding liquidity in their respective Arca LMM or DLP security or securities.

Under the Exchange’s proposed program, a Market Maker in an ETP may become an LMM in an ETP. The Exchange anticipates providing enhanced rebates and/or reduced fees for LMM executions in the LMM Security,<sup>12</sup> subject to a separate fee filing. Under the LMM Program, an LMM is a Market Maker in an ETP that has committed to maintain Minimum Performance Standards.<sup>13</sup> As is true under the Arca and Nasdaq programs, such Minimum Performance Standards will vary between LMM Securities

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<sup>11</sup> See Nasdaq Rule 7018(i).

<sup>12</sup> As defined in proposed Rule 11.8(e)(1)(C), LMM Security means an ETP that has an LMM.

<sup>13</sup> As defined in proposed Rule 11.8(e)(1)(D), Minimum Performance Standards means a set of standards applicable to an LMM that may be determined from time to time by the Exchange.

depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered and the relevant measurement metrics will include, but are not necessarily limited to: (i) percent of time at the NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; and (iv) average quoted spread. If an LMM does not meet the Minimum Performance Standards for a given month, fees and credits will revert to standard equities pricing, as provided in the Exchange's fee schedule. If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion. An LMM must provide 30 days written notice if it wishes to withdraw its registration as an LMM in an LMM Security, unless it is also withdrawing as a market maker in the LMM Security.

As is true under the Arca and Nasdaq programs, after indicating interest in being an LMM for an ETP, a Market Maker will be selected by the Exchange to be an LMM based on factors including, but not limited to, experience with making markets in ETPs, adequacy of capital, willingness to promote the Exchange as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Exchange rules and securities laws. As is true under the Nasdaq program, the Exchange may limit the number of LMMs in a particular security, or modify a previously established limit, upon prior written notice to Members. Specifically, the Exchange may modify a limit either to increase or decrease the number of LMMs for a security upon providing such prior written notice.

(b) Statutory Basis

The Exchange believes that the proposed rule change 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.<sup>14</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>15</sup> in that it is designed 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. At the outset, the Exchange notes that registration as an Exchange Market Maker is equally available to all Members that satisfy the requirements of Rule 11.8 and that LMMs will be chosen based on the pre-determined factors described in the proposed rule. The Exchange believes that by allocating pricing benefits to Market Makers that make tangible commitments to enhancing market quality for BATS-listed ETPs, the proposal will encourage the development of new financial products, provide a better trading environment for investors in ETPs, and encourage greater competition between listing venues for ETPs. The Exchange also believes that the proposal will promote tighter spreads and deeper liquidity for all market participants by requiring LMMs to meet Minimum Performance Standards for an LMM Security based on percent of time at the NBBO, percent of executions better than the NBBO, average displayed size, and average quoted spread, plus any other metric that the Exchange deems appropriate for measuring performance in a particular LMM Security.

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<sup>14</sup> 15 U.S.C. 78f(b).

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

As proposed, the LMM Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for BATS-listed ETPs. The Exchange believes that the proposed change would increase competition with Arca and Nasdaq by incenting Exchange Market Makers to apply to become LMMs, which will enhance the quality of quoting in BATS-listed ETPs. The Exchange also believes that the LMM Program will further assist the Exchange to develop an alternative to Nasdaq and the Arca for an issuer seeking to list its ETPs. Accordingly, the Exchange believes that the proposal will complement the Exchange's program for listing ETPs on the Exchange, which will, in turn, provide issuers with another option for listing an ETP on the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.<sup>16</sup>

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive offering to the Arca LMM program currently in place at Arca and the DLP program in place at Nasdaq. The Exchange believes that this proposed rule change is necessary to permit fair competition among the listing exchanges. Further, the Exchange believes that the proposed changes as a whole will contribute to tighter spreads and additional liquidity on the Exchange in BATS-listed ETPs, which will, in turn, benefit competition due to the improvements to the overall market quality of the Exchange.

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<sup>16</sup> 15 U.S.C. 78f(b)(5).

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)<sup>17</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>18</sup> 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.

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.

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

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<sup>17</sup> 15 U.S.C. § 78s(b)(3)(A)

<sup>18</sup> 17 C.F.R. § 240.19b-4(f)(6)(iii).

immediately because it has no substantive differences from programs in place at other exchanges. Specifically, the proposal is designed to create an incentive program for BATS-listed ETPs that is nearly identical to programs offered at both Nasdaq and Arca. 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.<sup>19</sup>

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

The proposed rule change is based substantially on the Nasdaq program for “Designated Liquidity Providers”<sup>20</sup> and does not differ substantively from the program as currently constituted,<sup>21</sup> except that the Exchange has not yet established pricing for the proposed LMM Program and the Exchange is proposing to include all securities listed on the Exchange pursuant to Rule 14.11 in the LMM Program, while Nasdaq allows only exchange traded funds and index linked securities listed on Nasdaq pursuant to Nasdaq

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<sup>19</sup> Id.

<sup>20</sup> See Exchange Act Release No. 56130 (July 25, 2007), 72 FR 42163 (August 1, 2007) (SR-NASDAQ-2007-061).

<sup>21</sup> See supra note 11.

Rules 5705, 5710, or 5720.<sup>22</sup> The proposed rule change is also based in part on the Arca LMM program<sup>23</sup> except: (i) the Exchange's proposal is limited to ETPs, while Arca's program is not explicitly limited in this way; (ii) the performance standards for LMMs do not necessarily include the ability of the Exchange Market Maker to transact in underlying securities; (iii) the Exchange may recognize multiple LMMs in a particular security, while the Arca rule limits each Arca-listed product to one Arca LMM; and (iv) the Exchange has not yet established pricing for the proposed LMM Program.

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.

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

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<sup>22</sup> See Nasdaq Rule 7018(i)(1)(B).

<sup>23</sup> See supra note 10.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; 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.

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 April 17, 2014, 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 this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> 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 to institute an incentive program for market makers registered with the Exchange (“Market Makers”)<sup>5</sup> in ETPs<sup>6</sup> 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

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<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).

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

<sup>5</sup> See BATS Rule 11.5.

<sup>6</sup> As defined in proposed Rule 11.8(e)(1)(A), ETP means any security listed pursuant to Exchange Rule 14.11.

Act.<sup>7</sup> The Exchange will implement the proposed rule change on a date that will be circulated in a notice from the BATS Trade Desk.<sup>8</sup> 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 website 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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.<sup>9</sup> Shortly thereafter, the Exchange also received approval to operate a program in which all BATS-listed securities participate that is designed to incentivize certain Market Makers as

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<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>8</sup> 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.

<sup>9</sup> See Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

Competitive Liquidity Providers (“CLPs”) to enhance liquidity on the Exchange in such BATS-listed securities (the “CLP Program”) by offering daily financial rebates to CLPs based on the size of their *quotes* at the NBBO<sup>10</sup> throughout the day.<sup>11</sup> In order to provide issuers with an additional option for enhancing liquidity in BATS-listed ETPs and as a competitive response to liquidity enhancement programs at other listing exchanges, the Exchange is proposing to implement an additional program designed to incentivize certain Market Makers that are willing to meet designated performance standards to enhance liquidity on the Exchange in ETPs by providing enhanced rebates to such Market Makers, the LMM Program, for *executions* in BATS-listed ETPs, as further described below. As proposed, the LMM Program is designed to incentivize select Market Makers to enter more aggressive orders in BATS-listed ETPs by providing enhanced rebates for executions in the BATS-listed ETP in which the Market Maker is registered as a lead market maker (a “LMM”) where the LMM meets certain performance measurements designated by the Exchange. As proposed, a BATS-listed ETP that is participating in the CLP Program would not be eligible for participation in the LMM Program until and unless such ETP is no longer participating in the CLP Program. Further, any ETP that is listed on the Exchange after the implementation of the LMM Program will not be eligible for participation in the CLP Program. Prior to the implementation of the LMM Program, the Exchange intends to file a proposal detailing changes to the current CLP Program along with a new supplemental quoting incentive program in which ETPs participating in the LMM program may also participate.

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<sup>10</sup> As defined in Rule 1.5(o), NBBO means the national best bid or offer.

<sup>11</sup> See Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR-BATS-2011-051).

The Exchange is proposing to adopt rules that are similar to those regarding the SEC approved NYSE Arca, Inc. (“Arca”) program for Lead Market Makers<sup>12</sup> (“Arca LMMs”) and The NASDAQ Stock Market LLC (“Nasdaq”) program for Designated Liquidity Providers (“DLPs”).<sup>13</sup> Under both programs, an Arca LMM for a security listed on Arca or a DLP for a security listed on Nasdaq is required to maintain minimum performance standards with regard to (i) percent of time at NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; (iv) average quoted spread; and (v) in the case of derivative securities listed on Arca, the ability of the Arca LMM to transact in underlying markets. This list, however, is not exhaustive, so Nasdaq (and BATS, as proposed and further discussed below) could apply any additional minimum performance standards, including the ability of a DLP to transact in underlying markets. Additionally, because Arca LMMs and DLPs are required to be registered market makers, they must also meet each respective exchange’s requirements for being a market maker. In return, an Arca LMM receives both enhanced rebates for adding liquidity and reduced fees for removing liquidity and a DLP on Nasdaq receives enhanced rebates for adding liquidity in their respective Arca LMM or DLP security or securities.

Under the Exchange’s proposed program, a Market Maker in an ETP may become an LMM in an ETP. The Exchange anticipates providing enhanced rebates and/or

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<sup>12</sup> See Arca Rule 7.24 and NYSE Arca Schedule of Fees and Charges for Exchange Services at [https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse\\_arca\\_marketplace\\_fees\\_\\_for\\_2-1-14.pdf](https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees__for_2-1-14.pdf).

<sup>13</sup> See Nasdaq Rule 7018(i).

reduced fees for LMM executions in the LMM Security,<sup>14</sup> subject to a separate fee filing. Under the LMM Program, an LMM is a Market Maker in an ETP that has committed to maintain Minimum Performance Standards.<sup>15</sup> As is true under the Arca and Nasdaq programs, such Minimum Performance Standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered and the relevant measurement metrics will include, but are not necessarily limited to: (i) percent of time at the NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; and (iv) average quoted spread. If an LMM does not meet the Minimum Performance Standards for a given month, fees and credits will revert to standard equities pricing, as provided in the Exchange's fee schedule. If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion. An LMM must provide 30 days written notice if it wishes to withdraw its registration as an LMM in an LMM Security, unless it is also withdrawing as a market maker in the LMM Security.

As is true under the Arca and Nasdaq programs, after indicating interest in being an LMM for an ETP, a Market Maker will be selected by the Exchange to be an LMM based on factors including, but not limited to, experience with making markets in ETPs, adequacy of capital, willingness to promote the Exchange as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to

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<sup>14</sup> As defined in proposed Rule 11.8(e)(1)(C), LMM Security means an ETP that has an LMM.

<sup>15</sup> As defined in proposed Rule 11.8(e)(1)(D), Minimum Performance Standards means a set of standards applicable to an LMM that may be determined from time to time by the Exchange.

Exchange rules and securities laws. As is true under the Nasdaq program, the Exchange may limit the number of LMMs in a particular security, or modify a previously established limit, upon prior written notice to Members. Specifically, the Exchange may modify a limit either to increase or decrease the number of LMMs for a security upon providing such prior written notice.

## 2. Statutory Basis

The Exchange believes that the proposed rule change 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.<sup>16</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>17</sup> in that it is designed 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. At the outset, the Exchange notes that registration as an Exchange Market Maker is equally available to all Members that satisfy the requirements of Rule 11.8 and that LMMs will be chosen based on the pre-determined factors described in the proposed rule. The Exchange believes that by allocating pricing benefits to Market Makers that make tangible commitments to enhancing market quality for BATS-listed ETPs, the proposal will encourage the development of new financial products, provide a better trading environment for investors in ETPs, and encourage greater competition between listing venues for ETPs. The Exchange also believes that the proposal will promote tighter spreads and deeper liquidity for all market participants by requiring LMMs to

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

meet Minimum Performance Standards for an LMM Security based on percent of time at the NBBO, percent of executions better than the NBBO, average displayed size, and average quoted spread, plus any other metric that the Exchange deems appropriate for measuring performance in a particular LMM Security.

As proposed, the LMM Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for BATS-listed ETPs. The Exchange believes that the proposed change would increase competition with Arca and Nasdaq by incenting Exchange Market Makers to apply to become LMMs, which will enhance the quality of quoting in BATS-listed ETPs. The Exchange also believes that the LMM Program will further assist the Exchange to develop an alternative to Nasdaq and the Arca for an issuer seeking to list its ETPs. Accordingly, the Exchange believes that the proposal will complement the Exchange's program for listing ETPs on the Exchange, which will, in turn, provide issuers with another option for listing an ETP on the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.<sup>18</sup>

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive offering to the Arca LMM program currently in place at Arca and the DLP program in place at Nasdaq. The Exchange believes that this proposed rule change is necessary to permit fair competition among the

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<sup>18</sup> 15 U.S.C. 78f(b)(5).

listing exchanges. Further, the Exchange believes that the proposed changes as a whole will contribute to tighter spreads and additional liquidity on the Exchange in BATS-listed ETPs, which will, in turn, benefit competition due to the improvements to the overall market quality of the Exchange.

(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 Act<sup>19</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>20</sup> 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 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

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2014-015 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-2014-015. 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 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-2014-015 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.<sup>21</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

**Rules of BATS Exchange, Inc.**

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**CHAPTER XI. TRADING RULES**

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Rule 11.8. Obligations of Market Makers

(a)-(d) (No changes.)

(e) [(Reserved.)]Lead Market Maker Program

(1) Definitions. For purposes of this paragraph (e), the terms set forth below shall have the following meanings:

(A) The term “ETP” means any security listed pursuant to Exchange Rule 14.11. An ETP participating in the Competitive Liquidity Provider Program under Exchange Rule 11.8 Interpretation and Policy .02 (the “CLP Program”) shall not be eligible for participation in the Lead Market Maker Program under this paragraph (e) until and unless such ETP is no longer participating in the CLP Program. Any ETP listed after implementation of this Rule 11.8(e) shall not be eligible for participation in the CLP Program.

(B) The term “LMM” means a Market Maker registered with the Exchange for a particular LMM Security that has committed to maintain Minimum Performance Standards in the LMM Security.

(C) The term “LMM Security” means an ETP that has an LMM.

(D) The term “Minimum Performance Standards” means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread.

(2) Lead Market Makers.

(A) LMMs shall be selected by the Exchange based on factors including, but not limited to, experience with making markets in ETPs, adequacy of capital, willingness to promote the Exchange as a marketplace, issuer

preference, operational capacity, support personnel, and history of adherence to Exchange rules and securities laws.

(B) The Exchange may limit the number of LMMs in a security or modify a previously established limit upon prior written notice to Members.

(C) If an LMM does not meet the Minimum Performance Standards for a given month, fees and credits will revert to standard equities pricing, as provided in the Exchange's fee schedule. If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion. An LMM must provide 30 days written notice if it wishes to withdraw its registration as an LMM in an LMM Security, unless it is also withdrawing as a market maker in the LMM Security.

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#### Interpretations and Policies

.01 (No changes.)

.02 Competitive Liquidity Provider Program

(a)-(c) (No changes.)

(d) *Securities Eligible for the CLP Program.*

(1) (No changes.)

(2) Exchange Traded Products. Any Exchange-listed security that is listed on the Exchange pursuant to Rule 14.11 (relating to exchange traded funds and other exchange traded products (collectively, "ETPs")) prior to the implementation of Rule 11.8(e), entitled Lead Market Maker Program, shall be eligible for the CLP Program unless and until such security has had a CADV of equal to or greater than 2 million shares for two (2) consecutive calendar months during the first three (3) years the security is subject to the CLP Program; or (2) has been subject to the CLP Program for three (3) years; provided, however, that any ETP initially listed on the Exchange shall be eligible for the CLP Program for six months regardless of the ETP's CADV. ETPs listed on the Exchange after the implementation of the Lead Market Maker Program will not be eligible for participation in the CLP Program.

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