

a Non-U.S. Clearing Member.<sup>11</sup> In order to accommodate the participation by Canadian Clearing Members in the Stock Loan/Hedge Program as provided in this proposed rule change, OCC proposes to make certain conforming changes to its Non-U.S. Clearing Member Agreement. OCC also proposes to make certain technical changes to its Non-U.S. Clearing Member Agreement for clarity and consistency with its U.S. Clearing Member Agreement.

Finally, for ease of reference throughout the proposed addition to Interpretation .07 to Section 1 of Article V of the By-Laws, OCC proposes to define a Canadian Clearing Member approved to participate in the Stock Loan/Hedge Program as a “Canadian Hedge Clearing Member” for purposes of its By-Laws and Rules.

OCC believes that the proposed changes to OCC By-Laws are consistent with the purposes and requirements of Section 17A of the Act,<sup>12</sup> and the rules and regulations thereunder, because they are designed to promote the prompt and accurate clearance and settlement of stock loan and borrow transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, protect investors and the public interest.<sup>13</sup> OCC believes that the proposed changes to OCC By-Laws achieve this by facilitating participation by Canadian Clearing Members in OCC’s Stock Loan/Hedge Program in a manner that protects the clearing system against risk through the same or equivalent mechanisms used with respect to domestic clearing members. OCC also believes that the proposed rule change is not inconsistent with the existing OCC By-Laws, including any By-Laws proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>11</sup> OCC’s By-Laws define “Non-U.S. Clearing Member” as a Non-U.S. Securities Firm that has been admitted to membership in OCC pursuant to the provisions of OCC’s By-Laws and Rules.

<sup>12</sup> 15 U.S.C. 78q–1.

<sup>13</sup> 15 U.S.C. 78q–1(b)(3)(F).

*(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

(A) By order approve or disapprove the proposed rule change or

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

The proposed rule change shall not take effect until all regulatory actions required with respect to the proposed rule change are completed.

**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 Commissions 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–OCC–2013–03 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–OCC–2013–03. 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 Section, 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 filings will also be available for inspection and copying at the principal office of OCC and on OCC’s Web site at [http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_13\\_03.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_03.pdf).

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–OCC–2013–03 and should be submitted on or before April 16, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–69190; File No. SR–BATS–2013–005]

**Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change To Modify the Competitive Liquidity Provider Program to, Among Other Things, Modify the Calculation of Size Event Tests**

March 20, 2013.

**I. Introduction**

On January 18, 2013, BATS Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), and Rule 19b–4 thereunder, a proposed rule change to modify the Exchange’s competitive liquidity provider program, to among other things, modify the calculation of size event tests. The proposed rule change was published in the **Federal**

<sup>14</sup> 17 CFR 200.30–3(a)(12).

Register on February 6, 2013.<sup>1</sup> The Commission received no comments on the proposal. This order approves the proposal.

## II. Description of the Proposal

The Exchange operates a competitive liquidity provider program that provides incentives to certain Exchange market makers to provide additional liquidity in Exchange listed securities.<sup>2</sup> The Exchange proposes to modify certain aspects of the competitive liquidity provider program.

### A. Calculation of Size Event Tests

Currently, a market maker participating in the competitive liquidity provider program would be eligible for a financial rebate based on the size of the liquidity provided by the market maker. The Exchange calculates the rebate by examining, at least once per second, the quoted size at the national best bid and national best offer (“Size Event Test”). The market maker with the greatest aggregative size would be considered the winner of the Size Event Test.

The Exchange proposes to bifurcate the calculation of the Size Event Test by the bid and the offer. Thus, instead of having one winner, the Exchange proposes to have two separate winners—one winner at the bid and one winner at the offer. As proposed, the market maker with the greatest aggregated size at the national best bid (excluding odd lots) would be considered the winner of the bid test and the market maker with the greatest aggregative size at the national best offer (excluding odd lots) would be considered the winner of the offer test.

### B. Financial Rebates for the Bid Winner and the Offer Winner

In connection with the proposal to bifurcate the Size Event Test winners into the bid test winner and the offer test winner, the Exchange proposes to provide financial rebates separately. Currently, a market maker must have at least 10% of the winning Size Event Tests in order to meet its daily quoting requirements and qualify for the financial rebate. The Exchange proposes to allocate the rebate to both the bid test winner and the offer test winner.

### C. Allocation of Financial Rebates

The competitive liquidity provider program assigns only one market maker for the first six months of a security’s initial listing. Thereafter, multiple

market makers may qualify to quote and to receive the financial rebates.

Currently, for Tier I securities and exchange traded products, 80% of the rewards would go to the market maker with the highest number of winning tests and 20% of the total rewards would go to the market maker with the second highest number of winning tests.<sup>3</sup> The Exchange proposes to allocate the rewards differently. Instead of a fixed dollar amount, the Exchange would reward the two winning market makers based on a pro rata amount, calculated on the combined sum of their winning tests.

### D. Quoting Requirements

Currently, the Exchange requires each market maker to quote at least one round lot. The Exchange proposes to increase the minimum quoting requirement to five round lots in order for market makers to qualify for the winning tests.

The Exchange also proposes to add an additional quoting requirement for market makers to qualify for the winning tests. In order to qualify for the winning bid test, the Exchange is proposing for market makers to quote at least a displayed round lot offer at a price at or within 1.2% of the market maker’s bid. Conversely, in order to qualify for the winning offer test, the market makers must quote at least a displayed round lot bid at a price at or within 1.2% of the market maker’s offer.

### E. Time of Operation

Currently, the competitive liquidity provider program measures participants in assigned securities during Exchange regular trading hours, from 9:30 a.m. to 4:00 p.m. The Exchange proposes to extend the time by 10 total minutes, from 9:25 a.m. to 4:05 p.m.<sup>4</sup>

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires that the rules of an exchange be designed, among other things, to promote just and

equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is consistent with the requirements of the Act and should benefit investors by providing additional liquidity in the securities that participate in the competitive liquidity provider program. The Commission believes that bifurcating the Size Event Tests could incentivize market makers to provide two-sided quotes that could enhance the liquidity of the security. Moreover, the Exchange’s proposal to provide the rebate to the winner of the bid test and the winner of the offer test could provide a stimulus to market makers to increase quoting size on both sides of the market. The Commission believes that the allocation, on a pro rata basis, of the financial rebate should provide a more equitable distribution of the rebate to the winning market makers. The Commission believes that the proposed quoting requirements should enhance the market size and could lead to tighter spreads. Finally, the Commission believes the extended time period could entice market makers to provide more quotes in the opening auctions and closing auctions.

For the reasons stated above, the Commission believes that the proposal is consistent with the requirements of the Act and is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-BATS-2013-005), be, and it hereby is, approved.

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

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

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<sup>3</sup> For Tier II securities, there is only one rebate for the winner.

<sup>4</sup> See proposed Exchange Rule 11.8.02(g)(1).

<sup>5</sup> In approving the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See Securities Exchange Act Release No. 68789 (January 31, 2013), 78 FR 8655.

<sup>2</sup> See Exchange Rule 11.8.02.