

precedent from other exchanges.<sup>17</sup> The Commission notes that the proposed rule change would make such intended process for filling vacancies for Member Representative Director positions explicit in the New By-Laws.

The proposed rule change would also clarify that the procedures for filling any vacancies would also apply to vacancies created as a result of an increase in the size of the board. The Exchange has represented that generally, if the board has determined to increase the size of the board, it is creating the new directorship seat(s) because it has identified a qualified candidate(s) who would improve the overall quality of the board.<sup>18</sup> The Exchange has stated that, under these circumstances, time is of the essence and waiting to elect a director(s) to fill a newly created directorship seat(s) at the next scheduled annual stockholder meeting is not in the best interests of the Exchange or its stockholders. Consequently, the Exchange has stated that it is necessary that the New By-Laws provide a more streamlined process to fill a vacancy created by increasing the size of the board.<sup>19</sup> The Commission notes that Exchange has represented that any vacancies filled pursuant to the New By-Laws would be required to continue to comply with its existing compositional requirements.

Finally, the proposed rule change would also provide that if the remaining term of office of any director at the time of the director's vacancy is not more than six months, during the period of such vacancy the board will not be deemed to be in violation of the compositional requirements of Article III, Section 2(b) because of such vacancy. The Exchange notes that applying the six month grace period to any director vacancy, rather than just a Member Representative Director vacancy, is consistent with precedent from other exchanges. Further, the Exchange notes that this would be less disruptive to the director election process by permitting any vacancy to be filled at the next scheduled annual stockholder meeting, rather than through an earlier-held special stockholder meeting.

For the reasons stated above, the Commission believes that the proposal is consistent with the requirements of the Act and is designed to enable the Exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply with, and enforce compliance by its members and persons

associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-BATS-2013-024) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

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

[FR Doc. 2013-15935 Filed 7-2-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69877; File No. SR-BATS-2013-036]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Introduce a Connectivity Option Through Points of Presence

June 27, 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 June 19, 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 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 proposed rule change to offer a new means of connecting to the Exchange via physical connections in a data center other than the data centers where the Exchange's servers are located.

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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to offer new physical connections to Members and non-Members of the Exchange.

The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. Exchange participants, including participants trading on the Exchange and market data recipients, are required to connect directly to the Exchange at the data centers where the Exchange maintains servers. If an Exchange participant does not have a presence within the same data centers as the Exchange then such connection necessarily involves acquiring connectivity from a participant's location or data center to the data centers where the Exchange's servers are located. The Exchange is proposing to provide market participants with the ability to access the Exchange's network through data center entry points at one or more data centers other than the Exchange's primary or secondary data center ("Remote Data Centers"), or Points of Presence ("PoPs").

PoP ports will be located at Remote Data Centers in order to provide participants that may not have a presence at the Exchange's primary or secondary data center with connectivity to such data centers. Connectivity established via PoP ports at any data center where the Exchange offers them will allow market participants to perform all operations that they would typically perform when connecting directly to the Exchange at the Exchange's primary or secondary data

<sup>17</sup> *Id.*

<sup>18</sup> See Notice *supra* note 3, 78 FR at 28665.

<sup>19</sup> See *id.*

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</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.

center, including order entry and receipt of market data. In providing this service, participants will establish a physical connection to the PoP ports in the Remote Data Center, from which point the Exchange will provide the requisite connectivity for the participants to access the Exchange's primary and/or secondary data centers through one or more third party telecommunications carriers.

PoP access will not provide any market participant a connectivity option from the PoP data center to the Exchange's primary or secondary data center that the Exchange can guarantee is any faster or more reliable than can be achieved through independently established connections to the Exchange's primary or secondary data center. However, the Exchange does believe that some participants may choose to connect to the Exchange at a PoP to the extent the Exchange's service offering makes connecting to the Exchange in this way more easily established (i.e., rather than separately establishing relationships with one or more connectivity providers) or more cost effective. While PoP access will be available to all participants, the Exchange believes it will be most attractive to smaller market participants that otherwise may not connect to the Exchange at all.

As noted above, participants that do not maintain a presence in either of the Exchange's data centers must establish connectivity to such data centers and currently must do so through third party telecommunications providers. By making PoP entry points available, the Exchange is adding additional entry points to the Exchange's network and reducing the need for such connectivity for participants located in the same data center as such PoPs. Thus, the optional means of access to the Exchange via PoPs at other data centers will provide market participants with another means of accessing the Exchange.

The Exchange proposes to provide the option to connect to the Exchange via physical ports at data centers where the Exchange maintains PoPs to any Member or non-member that has been approved to connect to the Exchange. Specifically, a PoP connection could be used by any Member, non-member service bureau that acts as a conduit for orders entered by Exchange Members, Sponsored Participant, or market data recipient. This new access option is in response to industry demand. Clients opting not to access the Exchange at a PoP point of entry will still be able to access the Exchange in the existing data centers in the same way as they do currently. The Exchange does not

anticipate that demand will exceed the capacity planned for PoP access. In the event that demand does exceed the capacity planned for PoP access, the Exchange will expand its infrastructure as necessary in order to meet demand.

## 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 of the Act.<sup>3</sup> Specifically, the Exchange believes the proposal furthers the objectives of Section 6(b)(5)<sup>4</sup> of the Act 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

Competition for customers and order flow amongst exchanges and other non-exchange market participants is considerable and the Exchange believes that the proposal to offer PoP connectivity clearly evidences such competition. The Exchange is offering this new connectivity option to keep pace with changes in the industry and evolving customer needs. PoP connectivity will be available to all Exchange constituents to whom such connectivity will be useful and cost-effective. The offering is entirely optional, and is geared towards attracting new customers, as well as retaining existing customers.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal will promote competition through the offering of an optional, additional mechanism to connect to the Exchange. The proposed rule change will enhance competition among service providers offering connections between market participants and the data centers. The offering will expand the multiple means of connectivity available, allowing customers to compare the benefits and costs connectivity with reference to numerous variables. The Exchange, and presumably its competitors, selects

service providers on a competitive basis in order to pass along price advantages to their customers, and to win and maintain their business. The offering is consistent with the Exchange's own incentives to facilitate as many market participants as possible in connecting to its market.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

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

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2013-036 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-BATS-2013-036. 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/>

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

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-BATS-2013-036 and should be submitted on or before July 24, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

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

[FR Doc. 2013-15929 Filed 7-2-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69888; File No. SR-ICEEU-2013-09]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 3 and Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3 Thereto, To Clear Contracts Traded on the LIFFE Administration and Management Market

June 28, 2013.

#### I. Introduction

On May 13, 2013, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-ICEEU-2013-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to implement a clearing

relationship in which ICE Clear Europe will clear contracts traded on the LIFFE Administration and Management ("LIFFE A&M") market<sup>3</sup> ("LIFFE Contracts").<sup>4</sup> On May 22, 2013, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.<sup>5</sup> Notice of the proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on May 29, 2013.<sup>6</sup> On June 4, 2013, ICE Clear Europe filed Amendment No. 2 to the proposed rule change.<sup>7</sup> Notice of Amendment No. 2 to the proposed rule change was published for comment in the **Federal Register** on June 12, 2013.<sup>8</sup> On June 20, 2013, ICE Clear Europe filed Amendment No. 3 to the proposed rule change.<sup>9</sup>

The Commission did not receive comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment Nos. 1, 2 and 3.

<sup>3</sup> LIFFE A&M is a recognized investment exchange under the UK Financial Services and Markets Act of 2000.

<sup>4</sup> The LIFFE Contracts include interest rate and government bond futures and options, certain agricultural futures and options, and futures and options on underlying equity securities and equity indices.

<sup>5</sup> In Amendment No. 1, ICE Clear Europe, among other things, clarified the scope of products proposed to be cleared, added new Rule 207(f) prohibiting its U.S. Clearing Members from clearing LIFFE Contracts that are futures or options on underlying U.S. securities, added additional clarification surrounding the operation of the combined F&O Guaranty Fund and the margining of LIFFE Contracts, and supplemented the statutory basis for the proposed rule change.

<sup>6</sup> Exchange Act Release No. 69628 (May 23, 2013), 78 FR 32287 (May 29, 2013) (SR-ICEEU-2013-09).

<sup>7</sup> In Amendment No. 2, ICE Clear Europe elaborated on certain aspects of the proposed clearing activities as they relate to LIFFE Contracts that are securities products and made a partial amendment to certain rules and procedures that would clarify the considerations under which certain margin and risk management requirements would be established and modified from time to time.

<sup>8</sup> Exchange Act Release No. 69703 (Jun. 5, 2013), 78 FR 35335 (Jun. 12, 2013) (SR-ICEEU-2013-09).

<sup>9</sup> In Amendment No. 3, ICE Clear Europe modified proposed Rule 207(f) to further define the persons that are subject to the restriction from clearing U.S. securities to include any Clearing Member having a U.S. residence, based upon the location of its executive office or principal place of business, including, without limitation, (i) a U.S. bank (as defined by Section 3(a)(6) of the Exchange Act) and (ii) a foreign branch of a U.S. bank or U.S. registered broker-dealer. The amendment is technical in nature and meant to clarify the scope of Rule 207(f) so that it is consistent with prior Commission actions. See *infra* n. 11 and accompanying text. Amendment No. 3 therefore did not require an additional comment period. The initial rule filing and all subsequent amendments filed are collectively referred to hereinafter as the "Proposal."

## II. Description of the Proposed Rule Change

### A. Background

As announced on December 20, 2012, ICE Clear Europe has agreed to act as the clearing organization for futures and option contracts traded on LIFFE A&M, including contracts traded over-the-counter and processed through LIFFE A&M's BClear service.<sup>10</sup> The LIFFE Contracts proposed to be cleared by ICE Clear Europe include instruments that constitute securities for the purposes of U.S. securities laws ("LIFFE Securities Products"), including U.S. securities, which for purposes of the Proposal, include futures or options on underlying U.S. equities and equity indices. The purpose of the Proposal is to implement this clearing relationship.

In the Proposal, ICE Clear Europe submitted revised Parts 1, 2, 4, 5, 7, 8, 11, and 12 and new Part 18 of the ICE Clear Europe Clearing Rules ("Rules") (along with other clarifying and conforming Rule amendments) and revisions to its Finance Procedures, Clearing Procedures, Delivery Procedures and Membership Procedures. The other proposed changes in the Rules and procedures reflect conforming changes to definitions and related provisions and other drafting clarifications, and do not affect the substance of the Rules and procedures.

### B. ICE Clear Europe Clearing Rules

The Proposal revises Part 1 of the Rules, in which Rule 101, which provides definitions for certain terms, is modified to add new defined terms and revise existing definitions. Included in the changes to Rule 101 are the designation of LIFFE A&M as a Market for which ICE Clear Europe provides clearing services, the addition of defined terms and other revisions to cover LIFFE Contracts and the creation of a new category "F&O Contracts" that will include Energy Contracts and LIFFE Contracts (and related definitions). The Energy Guaranty Fund will be re-designated as the F&O Guaranty Fund, which fund will be subdivided with respect to Energy Contracts and LIFFE Contracts.

Part 2 of the Rules has been revised to address requirements for LIFFE Clearing Members and other conforming changes. New Rule 207(f), as modified by Amendment No. 3 of the Proposal,

<sup>10</sup> BClear is a service operated by LIFFE A&M, which enables LIFFE A&M Clearing Members to report certain bilaterally agreed off-exchange trades to LIFFE A&M. After ICE Clear Europe launches its clearing business for LIFFE A&M, trades would be eligible for clearing by ICE Clear Europe upon being reported.

<sup>5</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.