

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73237; File No. SR-BATS-2014-043)

September 26, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Rule 11.24 to Permit Members to Designate their Retail Orders to be Identified as Retail on the Exchange's Proprietary Data Feeds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 18, 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 and II 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 Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ 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 the Substance of the Proposed Rule Change

The Exchange filed a proposed rule change to adopt a retail attribution program under new Rule 11.24. Under the program, Members⁵ will be able to designate that the orders they

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ A "Member" is defined "any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange." BYX Rule 1.5(n).

submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds.⁶ The proposed rule change is substantially similar to the existing rules of the BATS Y-Exchange, Inc. ("BYX")⁷ and EDGX Exchange, Inc. ("EDGX").⁸

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

⁶ The Exchanges proprietary data feeds are set forth under Exchange Rule 11.22.

⁷ See BYX Rule 11.24. Securities Exchange Act Release Nos. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR-BYX-2012-019); 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (Approval Order) (SR-BYX-2013-008); 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR-BYX-2014-001) (Notice of Filing and Immediate Effectiveness to Extend the Pilot Period for the Retail Price Improvement Program); and 72730 (July 31, 2014), 79 FR 45857 (SR-BYX-2014-013) (Notice of Filing and Immediate Effectiveness to Amend Rule 11.24(a)(2) to Include Riskless Principal Orders to the Types of Orders that May Qualify as Retail Orders under the Retail Price Improvement Program).

⁸ See Footnote 4 of the Exchange's Fee Schedule available at <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx>; Securities Exchange Act Release Nos. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 15.1(a) and (c)); Securities Exchange Act Release No. 69378 (April 15, 2013), 78 FR 23617 (April 19, 2013) (SR-EDGX-2013-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders); 69852 (June 25, 2013), 78 FR 39420 (July 1, 2013) (SR-EDGX-2013-20) (Notice of Filing and Immediate Effectiveness to Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders); and 72292 (June 2, 2014), 79 FR 32798 (June 6, 2014) (SR-EDGX-2014-13) (Order Approving Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule to Permit Members to Designate their Retail Orders to be Identified as Retail on the EDGX Book Feed).

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 adopt a retail attribution program under new Rule 11.24.

Under the program, Members will be able to designate that the orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange’s proprietary data feeds. The proposed rule change is substantially similar to the existing rules of BYX and EDGX.⁹

Earlier this year, the Exchange and its affiliate BATS Y-Exchange, Inc. (“BYX”) received approval to effect a merger (the “Merger”) of the Exchange’s parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA Exchange, Inc. (“EDGA”, and together with BATS, BYX and EDGX, the “BGM Affiliated Exchanges”).¹⁰ In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by BYX and EDGX in order to provide a consistent technology offering for members of the BGM Affiliated Exchanges.¹¹

⁹ See supra notes 7 and 8.

¹⁰ See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

¹¹ The Exchange anticipates that EDGA will submit a similar proposed rule change in the future to add a definition for “Retail Order” and to permit members to designate that their Retail Orders be identified as Retail on their respective proprietary data feeds.

Both BYX and EDGX¹² have established programs in an attempt to attract retail order flow to the Exchange. Under BYX's Retail Price Improvement ("RPI") Program, all exchange members are permitted to submit Retail Price Improvement Orders ("RPI Orders")¹³ which are designed to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation ("Protected NBB") or the national best offer that is a Protected Quotation ("Protected NBO", and together with the Protected NBB, the "Protected NBBO").¹⁴ Under the EDGX program, eligible EDGX members may qualify for a rebate under the Retail Order Tier included in Footnote 4 of the EDGX fee schedule. Both the BYX and EDGX rules define a Retail Order¹⁵ and provides [sic] attestation requirements¹⁶ that Members must complete to send Retail Orders to the Exchange.¹⁷ Under the

¹² See supra notes 7 and 8.

¹³ A "Retail Price Improvement Order" is defined in BYX Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least \$0.001 and that is identified as such. See Rule 11.24(a)(3).

¹⁴ The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

¹⁵ Both BYX and EDGX define Retail Order (i) an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology. See supra notes 7 and 8.

¹⁶ Both BYX and EDGX require Members to submit a signed written attestation, in a form prescribed by the exchange, that they have implemented policies and procedures that are

EDGX program, eligible members may designate also that their Retail Orders be identified as Retail on the EDGX book feed.¹⁸

The Exchange proposes to adopt a retail attribution program under new Rule 11.24. Under the program, Members who satisfy the requirements under proposed Rule 11.24 will be able to designate that their orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds. Specifically, proposed Rule 11.24 would: (i) define a Retail Order and Retail Member Organization ("RMO"); (ii) set forth an RMO's qualification and application requirements; (iii) outline procedures for when an RMO fails to abide by the Retail Order requirements; and (iv) outline the procedures under which a Member may appeal the Exchange's decision to disapprove it or disqualify it as an RMO. The proposed rule change is substantially similar to the existing functionality and requirements on the BYX¹⁹ and EDGX.²⁰ However, unlike the BYX and EDGX programs, the proposed rule change would not include any rebate provision or mechanics for price improvement, as described above. The proposed rule change would only allow an RMO to designate that their Retail Orders be

reasonably designed to ensure that substantially all orders designated by the Member as a "Retail Order" comply with the above requirements. See supra notes 7 and 8.

¹⁷ The attestation requirements and definition of Retail Order under Exchange Rule 11.24 are substantially similar to Footnote 4 of the EDGX fee schedule. See supra notes 7 and 8.

¹⁸ See Footnote 4 of the EDGX's fee schedule available at <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx>. To align functionality with EDGX, BYX has also recently submitted a proposed rule change to the Commission to add paragraph (i) to Rule 11.24 to permit Members to designate that their Retail Orders submitted under the Exchange's RPI Program be identified as Retail on BYX's proprietary data feeds, rather than by their MPID. See SR-BYX-2014-024 (filed September 17, 2014).

¹⁹ See supra note 7.

²⁰ See supra note 8.

identified as Retail on the Exchange's proprietary data feeds,²¹ as is currently provided for by EDGX.

Definitions

The Exchange proposes to adopt the following definitions under proposed Rule 11.24(a). First, the term "Retail Member Organization" would be defined as a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders. The proposed definition of Retail Member Organization is identical to that contained in BYX Rule 11.24(a)(1).²²

Second, the term "Retail Order" would be defined as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The proposed definition of Retail Order is identical to that contained in BYX Rule 11.24(a)(1) and in Footnote 4 of the EDGX fee schedule.²³

Program Requirements and Procedures

The proposed rule change would also include qualification standards and a review process identical to BYX Rule 11.24(b). The qualification and review standards under proposed Rule 11.24(b) are designed to ensure that Members are properly qualified as an RMO and only attribute as Retail those orders that meet the definition of Retail Orders under proposed Rule 11.24(a)(1) described above. Like on BYX, under proposed Rule 11.24(b), any Member could

²¹ The Exchange will submit a proposed rule change to the Commission should it decide in the future to expand the program to include a rebate or price improvement mechanism for Retail Orders.

²² See supra note 7.

²³ See supra notes 7 and 8.

qualify as an RMO if it conducts a retail business or handles Retail Orders on behalf of another broker-dealer. Any Member that wishes to obtain RMO status would be required to submit: (1) an application form; (2) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted by the Member as Retail Orders would meet the qualifications for such orders under proposed Rule 11.24(a)(1); and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.²⁴

Like on BYX and EDGX, an RMO would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders

²⁴ For example, a prospective RMO could be required to provide sample marketing literature, website screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.²⁵

If the Exchange disapproves the application, the Exchange would provide a written notice to the Member. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 11.24(d), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. The disapproval process is identical to BYX Rule 11.24(b)(4). An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Failure of RMO to Abide by Retail Order Requirements

Proposed Rule 11.24(c) addresses an RMO's failure to abide by Retail Order requirements, which are identical to existing BYX Rule 11.24(c). If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a Member from its status as an RMO. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the Member. A disqualified RMO could appeal the disqualification as provided in proposed Rule 11.24(d) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.

Appeal of Disapproval or Disqualification

Proposed Rule 11.24(d) provides appeal rights to Members, which are also identical to existing BYX Rule 11.24(d). If a Member disputes the Exchange's decision to disapprove it as an RMO under Rule 11.24(b) or disqualify it under Rule 11.24(c), such Member ("appellant")

²⁵ The Exchange or another self-regulatory organization on behalf of the Exchange will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Attribution Panel (the “Panel”) review the decision to determine if it was correct.

The Panel would consist of the Exchange’s Chief Regulatory Officer (“CRO”), or a designee of the CRO, and two officers of the Exchange designated by the Chief Information Officer (“CIO”). The Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The Panel could overturn or modify an action taken by the Exchange and all determinations by the Panel would constitute final action by the Exchange on the matter at issue.

Attribution

Currently, Members may elect that their display-eligible orders entered into the Exchange utilize Attributable Orders²⁶ to include their market participant identifier (“MPID”) with their published quotations on the Exchange’s proprietary data feeds. Under the EDGX program, eligible members may designate that their Retail Orders be identified as Retail on the EDGX book feed, rather than by their MPID.²⁷ To align functionality with EDGX, the Exchange now proposes Rule 11.24(i) [sic] to permit Members to designate that their Retail Orders submitted under the Exchange’s RPI Program be identified as Retail on the Exchange’s proprietary data feeds.²⁸ Members will still be permitted to designate their Retail Orders by their MPID if they do not choose this optional functionality. The Exchange proposes to allow Members to

²⁶ An Attributable Order is defined as, “[a]n order that is designated for display (price and size) including the User’s market participant identifier (‘MPID’).” See Rule 11.9(c)(14).

²⁷ See supra note 8.

²⁸ A Member’s decision on whether to identify their Retail Order as Retail under the proposed rule change will not impact that Member’s eligibility to qualify as a Retail Member Organization under Rule 11.24.

designate their orders as Retail on an order-by-order basis or by establishing a port setting such that all orders submitted through a specific order entry port are designated as Retail.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for increased execution opportunities to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.³¹ The Exchange believes that it is appropriate to create a [sic] such a retail attribution program to bring more retail order flow to a public market.

The proposed rule change is substantially similar to the existing functionality and rules of the BYX³² and EDGX.³³ The Exchange also notes that the Commission approved a similar

²⁹ 15 U.S.C. 78f.

³⁰ 15 U.S.C. 78f(b)(5).

³¹ See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

³² See supra note 7.

³³ See supra note 8.

programs [sic] by NYSE and NYSE MKT.³⁴ The proposed retail attribution program would contain identical definitions, standards and qualification procedures as the BYX, NYSE, and NYSE MKT programs. However, unlike these programs, the proposed rule change would not include any rebate provision or mechanics for price improvement, as described above. Like the Commission approved for EDGX,³⁵ the proposed rule change would only allow an RMO to designate that their Retail Orders be identified as Retail on the Exchange's proprietary data feeds.

The Exchange believes that the proposal will benefit market participants and help to promote transparency by providing additional information regarding quotations displayed on the Exchange and disseminated via the Exchange's proprietary data feeds. Specifically, any Member who satisfies the requirement under Rule 11.24(b) that wishes to disclose via the Exchange's proprietary data feeds that their order is a Retail Order will be permitted to do so, and such functionality is substantially similar to that currently offered by EDGX.³⁶ The proposal also promotes transparency by disseminating additional order information from Members who may otherwise designate their order as non-attributable, and thereby not include their MPID with

³⁴ See New York Stock Exchange, Inc.'s ("NYSE") Rule 107C. See also NYSE MKT LLC ("NYSE MKT") Rule 107C; NYSE Arca, Inc. ("NYSE Arca") Rule 7.44. Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (the "RLP Approval Order"). In conjunction with the approval of the NYSE Retail Liquidity Program, a nearly identical program was proposed and approved to operate on NYSE MKT LLC (formerly, the American Stock Exchange). For ease of reference, the comparisons made in this section only refer to NYSE Rule 107C, but apply equally to NYSE MKT Rule 107C. The Exchange notes that the NYSE and NYSE MKT programs do not allow members to elect that their retail orders be identified as Retail on the exchange's proprietary data feeds.

³⁵ See supra note 8.

³⁶ Id.

their published quote on the Exchange's proprietary data feeds.³⁷ As a result, the proposal will provide Members additional visibility into the types of orders they may interact with when an order is identified as a Retail Order. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage Members who wish to execute against Retail Orders to send additional orders to the Exchange. Therefore, the Exchange believes the increased liquidity would potentially stimulating further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency.

The Exchange also believes its proposed qualification standards and review process under Rule 11.24 promote just and equitable principles and are not unfairly discriminatory because they are designed to ensure that Members are properly qualified as an RMO and only attribute as Retail those orders that meet the definition of Retail Orders under proposed Rule 11.24(a)(1) described above. The qualification process proposed herein by the Exchange is not designed to permit unfair discrimination, but rather ensure that order that are designated to be attributed are Retail are, in fact, order submitted by a retail customer that satisfy the proposed definition of Retail Order. Lastly, the Exchange notes that these qualification and review provisions are identical to those includes in the rules of the BYX, NYSE, and NYSE MKT that have been previously approved by the Commission.³⁸

³⁷ The Exchange understands that, to date, EDGX has not experienced members who attribute orders by their MPID electing to instead attribute their Retail Orders as Retail on the EDGX book feed. On the contrary, the Exchange understands that EDGX members who previously did not attribute their order have chosen to do so as Retail under the EDGX program. Therefore, the Exchange does not anticipate its Members who currently utilize Attributable Orders to now elect that their Retail Orders be attributed as Retail.

³⁸ See supra notes 7 and 34.

The Exchange believes that allowing a Member to designate orders as Retail on either an order-by-order or on a port-by-port basis is consistent with the Act for the same reasons as the proposal as a whole is consistent with the Act. The Exchange believes that either method of designation results in the same message being received and processed by the Exchange's systems, and thus, merely reflects a detail in connection with the implementation of the optional designation.

Lastly, the proposed rule change is also generally intended to add certain system functionality currently offered by EDGX in order to provide a consistent technology offering for the Exchange and EDGX. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Members of the Exchange that are also participants on EDGX. The proposed rule change would also provide Members with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Members.

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

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment will not burden intramarket competition because the ability to designate Retail Orders to be identified as Retail on the Exchange's proprietary data feeds, rather than by their MPID, would be open to all Members that wish to send Retail Orders to the Exchange. The Exchange believes the proposed rule change would increase intermarket competition by identifying orders as Retail via the Exchange's proprietary data feeds would [sic] enable the Exchange to better compete with other exchanges that offer

similar retail order programs.³⁹ The Exchange believes that the amendment, by increasing the amount of disseminated information regarding Retail Orders, will increase the level of competition around retail executions resulting in better prices for retail investors.

The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve offering consistent functionality by the BGM Affiliated Exchanges.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁴⁰ and Rule 19b-4(f)(6) thereunder.⁴¹ 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 and Rule 19b-4(f)(6)(iii) thereunder.

³⁹ See supra note 34.

⁴⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴¹ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6)⁴² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴³ 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 Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will provide market participants with additional transparency by disseminating additional order information regarding the types of orders they may interact with when an order is identified as a Retail Order in a timelier manner. The Exchange further believes that waiver will immediately encourage market participants to send additional orders to the Exchange, thereby potentially stimulating further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency. The Commission believes that waiver of the operative delay is consistent with investor protection and the public interest. As a result, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.⁴⁴

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. If the Commission takes such action, the

⁴² 17 CFR 240.19b-4(f)(6).

⁴³ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁴ 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).

Commission shall institute proceedings to determine whether the proposed rule 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 e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2014-043 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2014-043. 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, D.C. 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2014-043, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Kevin M. O'Neill
Deputy Secretary

⁴⁵ 17 CFR 200.30-3(a)(12).