

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74152; File No. SR-BATS-2015-07)

January 27, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rules 2.5(c)(4) and 11.5 to Harmonize with EDGA and EDGX Rules, its Membership Requirements Applicable to Clearing Agencies that Clear Transactions for Members

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 January 22, 2015, 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rules 2.5(c)(4) and 11.15 to harmonize its membership requirements applicable to clearing agencies that clear transactions for Members⁵ of the Exchange with those set forth under EDGX Exchange, Inc. (“EDGX”)

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 The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a

and EDGA Exchange, Inc. (“EDGA”) rules.⁶

The text of the proposed rule change is available at the Exchange’s website at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rules 2.5(c)(4) and 11.15 to harmonize its membership requirements applicable to clearing agencies that clear transactions for Members with those set forth under EDGX and EDGA rules.⁷ 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.,

“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.” See Exchange Rule 1.5(n).

⁶ See EDGA Rules 2.5(c)(4) and 11.13; EDGX Rules 2.5(c)(4) and 11.13.

⁷ See supra note 6.

with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX and EDGX, the “BGM Affiliated Exchanges”).⁸ In the context of the Merger, the BGM Affiliated Exchanges are working to align certain rules, retaining only intended differences between the BGM Affiliated Exchanges. As part of this effort, the proposal set forth below harmonizes Exchange Rules 2.5 and 11.15 with EDGA and EDGX Rules 2.5 and 11.13 by no longer requiring that a Qualified Clearing Agency⁹ be a Member in order to clear other Member’s transactions executed on the Exchange.¹⁰

In sum, Rule 2.5(a)(4) currently provides that a Member also be a member of a Qualified Clearing Agency or clear its transactions executed on the Exchange through another Member that is a member of a Qualified Clearing Agency. Rule 11.15(a) currently requires a Qualified Clearing Agency be a Member of the Exchange in order to clear transactions on behalf of another Member. EDGA and EDGX Rules 2.5(c)(4) and 11.13(a) do not require that: (i) a Qualified Clearing Agency be a member in order to clear other member’s transactions executed on EDGA or EDGX; (ii) that a member be a member of a Qualified Clearing Agency; or (iii) that a member clear its transaction through a member of a Qualified Clearing Agency. Rather, EDGA and EDGX Rules simply require that a member clear transactions through a registered clearing agency using a continuous net settlement system. EDGA and EDGX Rules 11.13(a) further state

⁸ See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

⁹ The term “Qualified Clearing Agency” is defined as “a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange.” See Exchange Rule 1.5(u).

¹⁰ The Exchange understands that BYX is to file a proposed rule change with the Commission to adopt similar changes.

that this requirement may be satisfied by direct participation, use of direct clearing services, or by entering into a correspondent clearing arrangement with another member that clears trades through such agency.

As amended, Rules 2.5(a)(4) and 11.15(a) would be substantially similar to EDGA and EDGX rules 2.5(c)(4) and 11.3(a). Like EDGA and EDGX Rules 2.5(c)(4), Exchange Rules 2.5(a)(4) would require that a Member clear transactions through a Qualified Clearing Agency using a continuous net settlement system. Like EDGA and EDGX Rules 11.13(a), amended Exchange Rule 11.15(a) would state that this requirement may be satisfied by direct participation, use of direct clearing services, or by entering into a correspondent clearing arrangement with another member that clears trades through such agency. In addition, Exchange Rule 11.15(a) would no longer require a Qualified Clearing Agency be a Member in order to clear another Members' transactions executed on the Exchange.

The Exchange also proposes to add new subparagraph (b) to Rule 11.15 stating that notwithstanding subparagraph (a) of Rule 11.15, transactions may be settled "ex-clearing," provided that both parties to the transaction agree. Proposed subparagraph (b) to Rule 11.15 would be identical to EDGA and EDGX Rules 11.13(b). The Exchange also proposes to renumber the remaining subparagraphs of Rule 11.13 accordingly.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹¹ and furthers the objectives of Section 6(b)(5) of the Act,¹² in that it is

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change is identical to the existing rules of EDGA and EDGX.¹³ Requiring Qualified Clearing Agencies to be Members of the Exchange has unreasonably limited the ability of Members to clear trades through such agencies that are not Members when no such restriction is contained in the rules of EDGA or EDGX. The proposed rule change is, therefore, intended to align the Exchange's rules regarding Members clearing transaction through a Qualified Clearing Agency with that of EDGA and EDGX as well as BYX¹⁴ in order to provide consistent rules across the BGM Affiliated Exchanges. Consistent rules, in turn, will simplify the membership requirements for clearing agencies that are also clear transactions for members of the other BGM Affiliated Exchanges. The proposed rule change would provide greater harmonization between the rules of the BGM Affiliated Exchanges of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

¹³ See supra note 6.

¹⁴ See supra note 10.

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

The proposed rule change would not impose any burden on competition. The Exchange believes that the proposed rule changes will not burden intramarket competition because all Members would be subject to the same requirements with regard to clearing transactions through non-Member registered clearing agencies. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among the Exchange, BYX, EDGA and EDGX rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members of 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

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6)(iii) thereunder.¹⁶ The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

business days prior to the date of filing the proposed rule change as required by Rule 19b-4(f)(6).¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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.

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
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2015-07 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 No. SR-BATS-2015-07. 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

¹⁷ 17 C.F.R. 240.19b-4(f)(6).

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-2015-07 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.¹⁸

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Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).