

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74656; File No. SR-BATS-2015-25)

April 6, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 4.3, Record of Written Complaints

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 March 26, 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 proposes to amend Rule 4.3, Record of Written Complaints. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

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).

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Rule 4.3. Record of Written Complaints

(a) Each Member shall keep and preserve for a period of not less than [five]four years a file of all written complaints of customers and action taken by the Member in respect thereof, if any. Further, for the first two years of the [five]four-year period, the Member shall keep such file in a place readily accessible to examination or spot checks.

(b) (No change).

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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 II.A., II.B., and II.C. below, of the most significant aspects 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 filed a proposal to amend Rule 4.3, Record of Written Complaints, to conform with the rules of the Financial Industry Regulatory

Authority, Inc. (“FINRA”) for purposes of an agreement between the Exchange and FINRA, as well as to conform Exchange Rule 4.3 with the rules of the EDGX Exchange, Inc. (“EDGX”) and the EDGA Exchange, Inc. (“EDGA”).⁵

Pursuant to Rule 17d-2 under the Act,⁶ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (the “17d-2 Agreement”). The 17d-2 Agreement covers common members of the Exchange and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) examination of common members of the Exchange and FINRA for compliance with federal securities laws, rules and regulations and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of common members of the Exchange and FINRA for violations of federal securities laws, rules or regulations, or Exchange rules that the Exchange has certified as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members of the Exchange and FINRA with the federal securities laws, rules and regulations, and the rules of the Exchange that the

⁵ See EDGA and EDGX Rules 4.3. See also Securities Exchange Act Release Nos. 70715 (October 15, 2013), 78 FR 64041 (October 18, 2013) (SR-EDGA-2013-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA Rule 4.3, Record of Written Complaints, to Conform with Financial Industry Regulatory Authority, Inc. Rule 4513); and 70714 (October 15, 2013), 78 FR 64038 (October 18, 2013) (SR-EDGX-2013-39) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 4.3, Record of Written Complaints, to Conform with Financial Industry Regulatory Authority, Inc. Rule 4513).

⁶ 17 CFR 240.17d-2.

Exchange has certified as identical or substantially similar to FINRA rules.⁷

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. To conform to comparable FINRA rules for purposes of the 17d-2 Agreement, the Exchange proposes to amend Rule 4.3, Record of Written Complaints, to align with FINRA Rule 4513.⁸

Exchange Rule 4.3 currently requires that members of the Exchange (“Members”) keep and preserve written customer complaints⁹ for a period of not less than five years, the first two of which must be in a readily accessible place. To take into account FINRA’s four-year routine examination cycle for certain members, FINRA Rule 4513 requires that members preserve the customer complaint records for a period of at least four years. Under the 17d-2 Agreement, FINRA examines common members of the Exchange and FINRA for compliance with Exchange Rule 4.3. However, because of the differing retention periods between Exchange Rule 4.3 and FINRA Rule 4513, the 17d-2 Agreement

⁷ See Securities and Exchange Release No. 58375 (August 13, 2008), 75 FR 51295 (August 19, 2008) (approving File No. 10-198).

⁸ See also Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving Proposed Rule Change); (File No. SR-FINRA-2010-052).

⁹ Exchange Rule 4.3(b) defines a “complaint” as “any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of a Member or persons under the control of the Member in connection with (1) the solicitation or execution of any transaction conducted or contemplated to be conducted through the facilities of the Exchange or (2) the disposition of securities or funds of that customer which activities are related to such a transaction.”

specifically states that FINRA has the regulatory responsibilities for the first four years of Exchange Rule 4.3's five year record retention requirement.

The Exchange, therefore, proposes to decrease the record retention requirements under Rule 4.3 from five to four years. The Exchange believes that amending the record retention requirements for customer complaints to align with FINRA Rule 4513 would help to avoid confusion among Members that are also members of FINRA, EDGA, or EDGX. The Exchange further believes that aligning the Exchange's rules with FINRA Rule 4513 would account for FINRA's four-year routine examination cycle for certain members, which FINRA conducts on the Exchange's behalf under the 17d-2 Agreement ensuring consistent regulation of Members that are also members of FINRA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ in particular, 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, by eliminating unnecessary confusion with respect to the Exchange's rules. The proposed rule change should provide greater harmonization between similar Exchange, EDGA, EDGX and FINRA rules, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. The proposed rule change should foster cooperation and

¹⁰ See 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

coordination with persons engaged in facilitating transactions in securities and should remove impediments to and perfect the mechanism of a free and open market and a national market system consistent with the requirements of Section 6(b)(5) of the Act.¹²

(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 because the proposed change would apply to all Members equally.

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

No written comments were either solicited or received.

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)(ii) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

¹² 15 U.S.C. 78f(b)(5).

¹³ See 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁴ See 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent

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.

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 No. SR-BATS-2015-25 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.

to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File No. SR-BATS-2015-25. 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 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 No. SR-BATS-2015-25 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.¹⁵

Brent J. Fields
Secretary

¹⁵ See 17 CFR 200.30-3(a)(12).