

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73356; File No. SR-BATS-2014-045)

October 15, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.16 of BATS Exchange, Inc.

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 October 7, 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 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 amend paragraph (f) of Rule 11.16 to provide Members³ with additional time within which to submit a written claim for compensation for “losses resulting directly from the malfunction of the Exchange’s physical equipment, devices and/or programming or the negligent acts or omissions of its employees” (“Exchange Systems Issues”). In addition, the Exchange proposes to add a new paragraph (g) to Rule 11.16 to permit the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 “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).

or portions of orders routed by the Exchange through its affiliated routing broker-dealer, BATS Trading, Inc. (“BATS Trading”), to Trading Centers⁴ where such losses are claimed by the Member to have resulted directly from a malfunction of the physical equipment, devices and/or programming, or the negligent acts or omissions of the employees, of such Trading Centers (“Trading Center Systems Issue”).

The proposed rule change is substantially similar to the existing functionality on EDGX Exchange, Inc. (“EDGX”) and EDGA Exchange, Inc. (“EDGA”).⁵ The Exchange has designated the proposed rule change as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁶

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.

⁴ Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), defines a “Trading Center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” See also Exchange Rule 2.11(a).

⁵ See EDGA Rules 11.12(d)(3) and (e); EDGX Rules 11.12(d)(3) and (e). See also Securities Exchange Act Release Nos. 71061 (December 12, 2013), 78 FR 76685 (December 18, 2013) (SR-EDGA-2013-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.12, Limitations of Liability); and 71062 (December 12, 2013), 78 FR 76693 (December 18, 2013) (SR-EDGX-2013-45) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.12, Limitations of Liability). The Exchange notes that proposed Rule 11.16(g)(4) refers [sic] the liability limits under BATS Rule 11.16(d)(1) – (3), which differ from the existing EDGA and EDGX monthly liability limit of \$500,00 referenced under EDGA and EDGX Rules 11.12(e)(4) and set forth under EDGA and EDGX Rules 11.12(d)(1). The Exchange understands that both EDGA and EDGX intend to submit a proposed rule change to harmonize its liability limits with those of BATS and BYX.

⁶ 17 CFR 240.19b-4(f)(6)(iii).

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 Rule 11.16 to: (i) amend paragraph (f) to provide Members with additional time within which to submit a written claim for compensation for Exchange Systems Issues; and (ii) add a new paragraph (g) permitting the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through BATS Trading to Trading Centers where such losses are claimed by the Member to have resulted directly from a Trading Center Systems Issue.

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 (together with BATS, BYX, EDGA and EDGX, the "BGM Affiliated Exchanges").⁷ In the context of the Merger, the BGM Affiliated Exchanges are working to align certain rules, retaining only intended differences between the BGM Affiliated

⁷ See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

Exchanges. Thus, the proposal set forth below is intended to align the requirements for Member reimbursements with that of EDGX and EDGA in order to provide consistent requirement for users of the BGM Affiliated Exchanges.⁸

Extension of Deadline to Submit Claims

Rule 11.16 currently states that, except as provided in subsection (d) of the Rule, the Exchange and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Exchange or its use. Exchange Rule 11.16(d) provides a limited exception to its general limitation of liability that allows for the payment of compensation to Members for Exchange Systems Issues, subject to certain conditions. Subsection (d)(1) thru (3) of Rule 11.16 sets forth the aggregate limits of all claims made by market participants related to the use of the Exchange.

Currently, Rule 11.16(f) requires Members to submit claims for compensation to the Exchange by the opening of trading on the business day following the day on which the Member's use of the Exchange gave rise to the claim. To be consistent with EDGX and EDGA, the Exchange proposes to extend the deadline to submit a claim to no later than 4:00 p.m. Eastern Time, or 1:00 p.m. in the event of an early market close,⁹ on the second business day following the day on which the Member's use of the Exchange gave rise to the claim. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current

⁸ The Exchange understands that BYX is to file a proposed rule change with the Commission to adopt similar requirements.

⁹ Regular trading hours for days when the markets close early are typically 9:30 a.m. to 1:00 p.m. Eastern Time on the day after Thanksgiving and on Christmas Eve, unless Christmas Eve happens to fall on a weekend. See, e.g., BATS Exchange Trading Hours available at <http://batstrading.com/support/hours/>.

timeframe under Rule 11.16(f). The expansion of time to submit compensation claims should, therefore, increase the likelihood that Members will be able to submit claims to the Exchange in a timely manner. In addition, the proposed extended deadline is identical to that contained in EDGX Rule 11.12(d)(3) and EDGA Rule 11.12(d)(3).¹⁰

Reimbursement for Losses Sustained at Trading Centers

The Exchange also proposes to amend Exchange Rule 11.16 to add a new paragraph (g) that would authorize the Exchange, subject to express conditions and limitations, to compensate Members for losses relating to orders routed by the Exchange through BATS Trading to Trading Centers that the Member claims resulted directly from a Trading Center Systems Issue. Proposed Rule 11.16(g) is substantially similar to EDGX Rule 11.12(e) and EDGA Rule 11.12(e).¹¹

The Exchange believes that the proposed rule change will provide a remedy, not currently available under Rule 11.16, to Members that experience losses due to Trading Center Systems Issues after BATS Trading routed the Members' orders to a Trading Center that experienced such issues. The Exchange's authority to compensate Members for losses under Rule 11.16(d) only covers losses incurred as a result of Exchange Systems Issues, and does not currently extend to Trading Center Systems Issues. Even if the Exchange, via BATS Trading, were to seek and receive compensation on behalf of a Member from a Trading Center relating to a Trading Center Systems Issue, it does not currently have the authority to, in turn, pass such compensation along to the affected Member. The Exchange, therefore, proposes to add a new paragraph (g) to Rule 11.16 as an accommodation to Members, whereby the Exchange, via BATS Trading, would

¹⁰ See supra note 5.

¹¹ See supra note 5.

employ reasonable efforts to submit Members' claims for compensation on such Members' behalf to a Trading Center, and pass along to such Members the full amount of compensation, if any, obtained by BATS Trading from such Trading Center.¹²

Under proposed Rule 11.16(g), the Exchange would undertake to accept claims for losses submitted by Members, which claims must contain representations from such Members as to the accuracy of the information contained therein and that any losses incurred were the direct result of a Trading Center Systems Issue.¹³ The Exchange would employ reasonable efforts to submit such claims, via BATS Trading, to the Trading Center in question. If and to the extent that BATS Trading were to receive compensation from a Trading Center in response to a claim submitted on behalf of a Member, the full amount of such compensation would be passed through to the Member.

Proposed Rule 11.16(g)(1) would require that a Member seeking compensation for a loss due to a Trading Center Systems Issue must submit its claim to the Exchange in writing. The proposed rule would not include a specific deadline by which Members must submit claims for compensation. The Exchange notes that Trading Centers that are national securities exchanges impose different deadlines by which their Members must submit claims for compensation,¹⁴ and that many Trading Centers that are not national

¹² BATS Trading is considered a facility of the Exchange, and, therefore, claims for compensation due to an Exchange Systems Issue experienced by BATS Trading must be submitted in accordance with Exchange Rule 11.16(d).

¹³ Members receive reports from the Exchange shortly after a trade is consummated indicating whether their order, or a portion thereof, was executed at a Trading Center. The report will indicate the size and price of the execution on the Trading Center.

¹⁴ See Nasdaq Stock Market LLC Rule 4626 (requiring claims for compensation to be submitted by 12:00 p.m. Eastern Time on T+1). See also NYSE Arca, Inc. Options Rule 14.2, NYSE MKT LLC Rule 905NY, Chicago Board Options

securities exchanges either do not impose any deadline or otherwise handle requests for compensation on a case-by-case basis. It is, therefore, incumbent on, and the sole responsibility of, the Member to submit claims to the Exchange in a timely manner so that the Exchange may then forward such claim, via BATS Trading, in advance of any deadline required by that Trading Center. Upon receipt of a Member's claim, the Exchange would only verify that a valid order was submitted by the Member and accepted and acknowledged by the Exchange, that the Member's order or a portion of the order was routed by the Exchange via BATS Trading to a Trading Center, and that the Member represented that it incurred a loss as a result of a Trading Center Systems Issue. The Exchange would then use reasonable efforts to forward the claim, via BATS Trading, to such Trading Center.

Proposed Rule 11.16(g)(2) would state that the Exchange would pass along to the Member the full amount of any compensation that the Exchange, via BATS Trading, received from a Trading Center as a result of a claim submitted on behalf of the Member. Any compensation paid to the Member would be paid solely from the compensation, if any, recovered from that Trading Center and not from any other source.

Proposed Rule 11.16(g)(3) would account for the circumstance where more than one Member submitted a claim for loss resulting from the same Trading Center Systems Issue and the total amount of compensation received from the Trading Center is insufficient to fully satisfy the claims of all such Members. In such case, the Exchange would proportionally allocate the total amount received from the Trading Center, if any, among all such Members' claims based on the proportion that each such claim bears to

Exchange, Incorporated Rule 6.7 (requiring claims for compensation to be submitted by the open of regular trading hours on T+1).

the sum of all such claims. The Exchange believes that this provision will provide for equitable compensation among all Members that submit a valid claim related to a Trading Center Systems Issue by ensuring that Members are compensated on a pro rata basis.

The payment of claims submitted in response to an Exchange Systems Issue would be separate and apart from any pass-through of compensation paid due to a Trading Center Systems Issue. Proposed Rule 11.16(g)(4) would state that any pass-through of compensation to a Member in accordance with Rule 11.16(g) would be unrelated to any other claims for compensation that are made due to an Exchange Systems Issues under Exchange Rule 11.16(d). Accordingly, proposed Rule 11.16(g)(4) would state that any compensation paid to Members from reimbursement recovered from a Trading Center would not count against the Exchange's liability limits set forth in Rule 11.16(d), nor any applicable insurance maintained by the Exchange.

Notwithstanding the foregoing, the Exchange is not proposing to undertake or assume any responsibility to: (1) independently validate information submitted by a Member in connection with a claim for compensation for loss arising out of a Trading Center Systems Issue, other than the ticker, size and side of the affected orders and the Trading Center to which the affected orders were routed and alleged to have experienced a Trading Center Systems Issue; (2) ascertain or comply with any mandatory deadlines within which to submit claims for compensation to a Trading Center; (3) guarantee that any compensation will be procured from a Trading Center; (4) negotiate agreements with any Trading Centers to require compensation under any circumstances; or (5) take any additional steps with respect to a Trading Center Systems Issue if such Trading Center denies or fails to respond to any claim for compensation, in whole or in part. In other

words, the Exchange will, upon receipt of a claim for compensation from a Member for loss resulting from a Trading Center Systems Issue, reasonably endeavor to submit such claim, via BATS Trading, to the applicable Trading Center as soon as reasonably practicable, and if BATS Trading in turns receives an accommodation from such Trading Center, such accommodation will be passed along to the Member via the Exchange. Neither the Exchange nor BATS Trading will be under any obligation to know any Trading Center's rules, procedures and/or customs, to the extent any exist, for the submission of claims for compensation, nor to dispute a Trading Center's denial of a claim, whether in whole or in part, nor to take any further actions with respect to such claim in the event that the Trading Center does not respond at all to the claim. Accordingly, with this proposed rule change, the Exchange is not assuming any additional liability to Members for losses claimed to have resulted from Trading Center Systems Issues; rather, it proposes to serve a purely ministerial role, given the contractual privity that exists between BATS Trading and Trading Centers, in the submission of Members' claims for compensation to such Trading Centers on their behalf. To that end, proposed Rule 11.16(g)(5) would make clear that under no circumstances will the Exchanges' inability to procure compensation from a Trading Center, in whole or in part, for whatever reason, give rise to a claim for compensation from the Exchange pursuant to paragraph (d) of Rule 11.16 as a "negligent act or omission of an Exchange employee." Proposed Rule 11.16(g)(5) would further state that the Exchange would not be liable should the Trading Center deny such claim made pursuant to proposed Rule 11.16(g), in whole or in part, for any reason.

The Exchange believes that the provisions outlined in the above paragraph are

equitable because any claim submitted under the proposed Rule 11.16(g) would be subject to the rules, procedures, and discretion of the Trading Center in question. It is the Trading Center, and not the Exchange or BATS Trading, that ultimately decides whether to approve or deny a Member's claim, or even whether to act on such request at all. For example, the Exchange has no discretion over or responsibility for the information provided by the Member in its claim, and no discretion over or responsibility for whether such information is sufficient for the Trading Center to provide compensation. In addition, any claim submitted under the proposal would be subject to compensation only to the extent that the Trading Center provided such compensation to BATS Trading. Accordingly, because it is the Trading Center, and not the Exchange or BATS Trading, that ultimately decides whether a claim for compensation would be granted, the Exchange believes the proposal is fair and just in limiting the Exchange's liability in the event a Trading Center determines, for any reason, to deny a claim, in whole or in part, or even not to respond to such claim.

Implementation Date

The Exchange intends to implement the proposed rule changes as soon as practicable and will announce its availability via a trading notice to be posted on the Exchange's website.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁵ and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in that it is designed promote just and equitable principles of trade, remove impediments to, and

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. In addition, 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 substantially similar to the existing rules of EDGX and EDGA.¹⁷ The proposed rule change is intended to add certain requirements for Member reimbursements currently offered by EDGA and EDGX in order to provide a consistent rules across the BGM Affiliated Exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGA and EDGX. The proposed rule change would provide greater harmonization between Exchange and EDGX and EDGA rules 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.

Extension of Deadline to Submit Claims

Extending the deadline by which claims for compensation are submitted to the Exchange is designed to increase the likelihood that Members will be able to submit claims in a timely manner. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.16(f). Therefore, the Exchange believes the

¹⁷ See supra note 7.

proposed rule change is equitable and will promote fairness in the market place by providing Members increased time to submit claims that result from an Exchange Systems Issue.

Reimbursement for Losses Sustained at other Trading Centers

Like EDGX Rule 11.12(e) and EDGA Rule 11.12(e),¹⁸ proposed Rule 11.16(g) would enable the Exchange to pass through to Members any compensation that the Exchange is able to procure, via BATS Trading, from a Trading Center for losses claimed by Members to have resulted from a Trading Center Systems Issue. The proposal specifies a standardized method for Members to submit claims for compensation from a Trading Center, and for the Exchange to pass through to its Members any such compensation obtained, if and to the extent the Exchange, via BATS Trading, is able to obtain such compensation from the Trading Center. Furthermore, any compensation obtained by the Exchange from a Trading Center would be passed on to the Member who requested such reimbursement. If the amount received by the Exchange from the Trading Center was insufficient to satisfy all claims, it would be allocated among the claimants proportionally based on the percentage that each claimant's claim in relation to the sum of all claims received by the Exchange. In addition, the proposed pro-rata allocation methodology that the Exchange would employ would provide for equitable compensation among all Members who submit a claim related to a Trading Center Systems Issue and deter the risk of preferential treatment of certain Members by the Exchange. Therefore, the Exchange believes that the proposed rule change would protect investors and the public interest by potentially providing Members with a remedy not currently available to

¹⁸ See supra note 5.

them to recover for losses incurred as a result of Trading Center Systems Issues, which generally arise from factors unrelated to their trading activities.

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

The proposed rule change would not impose any burden on competition. The proposed rule change is designed to promote fairness in the marketplace by increasing the time within which a Member is to submit claims for Exchange System Issues and to be compensated for losses that result from Trading Center Systems Issues. The Exchange believes that the proposed rule changes will not burden intramarket competition because all Members would be subject to the same deadline to submit a claim for Exchange Systems Issues and be able to submit claims for reimbursement for certain losses incurred due to Trading Center System Issues. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among Exchange and 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 after the date of the filing, or such

shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6)²⁰ thereunder.

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 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-2014-045 on the subject line.

2. Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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 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.

Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2014-045. 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 Number SR-BATS-2014-045 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).