

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74513; File No. SR-BATS-2015-16)

March 16, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Rule 12.14, Front Running of Block Transactions

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 3, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) a 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 proposal to adopt new Rule 12.14, Front Running of Block Transactions, to conform with the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d-2 under the Act.³ The proposed rule change is identical to proposed rule changes submitted by the EDGX Exchange, Inc. (“EDGX”) and the EDGA Exchange, Inc. (“EDGA”) that were published by the Commission.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.17d-2.

⁴ See Securities Exchange Act Release Nos. 70625 (October 8, 2013), 78 FR 62842 (October 22, 2013) (SR-EDGA-2013-29) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA Rules 3.22, 13.3, and Adopt Rule 12.14, Front Running of Block Transactions to Conform With the Rules of Other Self-Regulatory Organizations); and 70626 (October 8, 2013), 78 FR 62855 (October 22,

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 adopt new Rule 12.14, Front Running of Block Transactions, which would require that Members and persons associated with a Member shall comply with FINRA Rule 5270 as if such Rule were part of the Exchange's Rules.⁵ FINRA Rule 5270 states that no FINRA member or person associated with a member shall cause to be executed an order

2013) (SR-EDGX-2013-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA [sic] Rules 3.22, 13.3, and Adopt Rule 12.14, Front Running of Block Transactions to Conform With the Rules of Other Self-Regulatory Organizations).

⁵ The proposed rule text is substantially the same as IM-2110-3 of the Nasdaq Stock Market LLC ("Nasdaq"), which has been approved by the Commission. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving Nasdaq's application for registration as a national securities exchange). See also Securities Exchange Act Release No. 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR-Nasdaq-2008-054) (Notice of Filing and Immediate Effectiveness). Securities Exchange Act Release No. 34-67774 (September 4, 2012), 77 FR 55519 (September 12 [sic], 2012) (Approval Order). See also supra note 4.

to buy or sell a security or a related financial instrument⁶ when such member or person associated with a member has material, non-public market information concerning an imminent block transaction⁷ in that security, a related financial instrument or a security underlying the related financial instrument.

FINRA Rule 5270 includes exceptions to the general prohibitions of the rule where a member can demonstrate that a transaction is unrelated to the material, non-public market information received in connection with the customer order. The Supplementary Material to FINRA Rule 5270 includes an illustrative list of potentially permitted transactions as examples of transactions that, depending upon the circumstances, may be unrelated to the customer block order. These types of transactions may include: where the member has information barriers established to prevent internal disclosure of such information; actions [sic] in the same security related to a prior customer order in that security; transactions to correct bona fide errors; or transactions to offset odd-lot orders.

In addition, Rule 5270 does not preclude transactions undertaken for the purpose of fulfilling, or facilitating the execution of, the customer block order. However, when engaging in trading activity that could affect the market for the security that is the subject of the customer block order, the member must minimize any potential disadvantage or harm in the execution of

⁶ FINRA Rule 5270 defines the term “related financial instrument” as “any option, derivative, security-based swap, or other financial instrument overlying a security, the value of which is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security.”

⁷ Under FINRA Rule 5270, a transaction involving 10,000 shares or more of a security, an underlying security, or a related financial instrument overlying such number of shares, is generally deemed to be a block transaction, although a transaction of fewer than 10,000 shares could be considered a block transaction. A block transaction that has been agreed upon does not lose its identity as such by arranging for partial executions of the full transaction in portions which themselves are not of block size if the execution of the full transaction may have a material impact on the market.

the customer's order, must not place the member's financial interests ahead of those of its customer, and must obtain the customer's consent to such trading activity. A member may obtain its customers' consent through affirmative written consent or through the use of a negative consent letter. The negative consent letter must clearly disclose to the customer the terms and conditions for handling the customer's orders; if the customer does not object, then the member may reasonably conclude that the customer has consented and the member may rely on such letter for all or a portion of the customer's orders. In addition, a member may provide clear and comprehensive oral disclosure to and obtain consent from the customer on an order-by-order basis, provided that the member documents who provided such consent and such consent evidences the customer's understanding of the terms and conditions for handling the customer's order.

The Exchange also proposes to state in new Rule 12.14 that although the prohibitions in Rule 5270 are limited to imminent block transactions, the front running of other types of orders that place the financial interests of the Member or persons associated with a Member ahead of those of its customer or the misuse of knowledge of an imminent customer order may violate other Exchange rules, including Rule 3.1 and Rule 12.6, or provisions of the federal securities laws.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in

⁸ 15 U.S.C. 78f(b)(5).

securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. By incorporating FINRA Rule 5270, new Rule 12.14 prohibits front running trading activity that the Exchange believes is inconsistent with just and equitable principles of trade while also ensuring that Members may continue to engage in transactions that do not present the risk of abusive trading practices that the rule is intended to prevent. The Exchange believes that Rule 12.14 would enhance the protection of customer orders by addressing various types of abusive trading that may be intended to take advantage of customer orders. As previously noted, the proposed rule text is substantially similar to Nasdaq's IM-2110-3, which has been approved by the Commission,⁹ as well as EDGA Rule 12.14 and EDGX Rule 12.14, which have been previously published by the Commission.¹⁰ By adopting Rule 12.14, the Exchange believes that imminent customer block orders would be better protected and that the proposed rule change will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and better protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to enable the Exchange to better protect imminent customer block orders, as well as to provide greater harmonization among Exchange and FINRA rules, resulting in less burdensome and

⁹ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving Nasdaq's application for registration as a national securities exchange). See also Securities Exchange Act Release No. 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR-Nasdaq-2008-054) (Notice of Filing and Immediate Effectiveness). Securities Exchange Act Release No. 34-67774 (September 4, 2012), 77 FR 55519 (September 12, 2012) (Approval Order).

¹⁰ See supra note 4.

more efficient regulatory compliance for common members.

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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² 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 for 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 Act¹³ and Rule 19b-4(f)(6)(iii) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange argues that waiver of the operative delay would enable it to enhance its rules protecting customer orders in a timely manner by explicitly prohibiting Members from trading ahead of block transaction in violation of proposed Rule 12.14 during what would be the operative delay period.¹⁷ The Exchange also represents that waiver of the operative delay would allow it to promptly incorporate Rule 12.14 into the 17d-2 Agreement, further reducing duplicative regulation of Exchange Members that are also members of FINRA. In addition, the Exchange states that waiving the operative delay would provide greater harmonization among Exchange, EDGA, EDGX, and FINRA rules, resulting in less burdensome and more efficient regulatory compliance for Members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement in a timelier manner. Based on the foregoing, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁸

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

¹⁷ The Exchange also represents that it has already informed its Members that it will implement the proposed rule change on March 23, 2015, a date that was determined based upon the effective date of a prior version of this filing. See BZX and BYX Regulatory Circular 15-003, Front Running of Block Transactions, dated February 24, 2015.

¹⁸ 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-2015-16 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BATS-2015-16. 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 such filing also will be available for inspection and copying at the principal offices 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-2015-16, 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.¹⁹

Brent J. Fields
Secretary

¹⁹ 17 CFR 200.30-3(a)(12).