

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-75354; File Nos. SR-BATS-2015-37; SR-BYX-2015-25; SR-EDGA-2015-19; SR-EDGX-2015-21)

July 2, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; BATS Y-Exchange, Inc.; EDGA Exchange, Inc.; and EDGX Exchange, Inc.; Order Approving Proposed Rule Changes, as Modified by Amendment No. 1, Relating to Liquidity Requirements for Securities Admitted to Unlisted Trading Privileges

I. Introduction

On May 5, 2015, BATS Exchange, Inc. (“BATS”); BATS Y-Exchange, Inc. (“BYX”); EDGA Exchange, Inc. (“EDGA”); and EDGX Exchange, Inc. (“EDGX”) (each, an “Exchange” and, collectively, the “Exchanges”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes to amend each Exchange’s Rule 11.2, “Securities Eligible for Trading,” to indicate that the Exchanges may determine not to designate for trading any security admitted to unlisted trading privileges that does not meet certain consolidated average daily trading volume thresholds. On May 15, 2015, the Exchanges each filed Amendment No. 1 to their respective proposals.<sup>4</sup> The proposed rule changes, as amended, were published for comment in the in the Federal Register on May 22, 2015.<sup>5</sup> The

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Each Amendment No. 1 amended and replaced its original proposal in its entirety.

<sup>5</sup> See Securities Exchange Act Release Nos. 74987 (May 18, 2015), 80 FR 29769 (“BATS Notice”); 74988 (May 18, 2015), 80 FR 29781 (“BYX Notice”); 74986 (May 18, 2015), 80 FR 29772 (“EDGA Notice”); and 74985 (May 18, 2015), 80 FR 29778 (“EDGX Notice”).

Commission received two comment letters regarding the proposals.<sup>6</sup> This order approves the proposed rule changes, as amended.

## II. Description of the Proposals

Each Exchange proposes to amend its rules by adding new paragraphs (b), (c), and (d) to Rule 11.2.<sup>7</sup> Proposed Rule 11.2(b) provides that an Exchange may determine not to designate for trading any security admitted to unlisted trading privileges on the Exchange when that security's consolidated average daily volume is equal to or less than 2,500 shares during the preceding 90 calendar days.<sup>8</sup> An Exchange may begin trading a security that it had previously not designated for trading pursuant to proposed Rule 11.2(b) if the security's consolidated average daily trading volume exceeds 5,000 shares over any 90 calendar day period since the security was not designated for trading.<sup>9</sup> An Exchange would be required to notify its members at least one trading day in advance of any securities it is making unavailable for trading pursuant to proposed Rule 11.2(b), and of any securities it is making available for trading pursuant to proposed Rule 11.2(c).<sup>10</sup>

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<sup>6</sup> See letters to Brent J. Fields, Secretary, Commission, from John A. McCarthy, General Counsel, KCG Holdings, Inc. ("KCG"), dated June 12, 2015 ("KCG Letter") available at <http://www.sec.gov/comments/sr-byx-2015-25/byx201525-1.pdf>; and from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated June 15, 2015 ("SIFMA Letter") available at <http://www.sec.gov/comments/sr-bats-2015-37/bats201537-1.pdf>.

<sup>7</sup> The existing provisions of Rule 11.2 will be included in proposed subparagraph (a).

<sup>8</sup> See proposed Exchange Rule 11.2(b). Based on internal statistics, the Exchanges anticipate that approximately 700 securities would meet this criterion.

<sup>9</sup> See proposed Exchange Rule 11.2(c).

<sup>10</sup> See proposed Exchange Rule 11.2(d).

Each Exchange would retain discretion over whether to determine not to quote and trade securities that meet the criteria in proposed Exchange Rules 11.2(b) and 11.2(c).<sup>11</sup> In determining whether to exercise its discretion under proposed Exchange Rules 11.2(b) and 11.2(c), an Exchange would consider such factors as member and investor feedback, as well as whether other non-listing exchanges have decided to cease quoting and trading in the affected securities.<sup>12</sup>

The Exchanges state that the proposals may facilitate an improvement in market quality for the affected securities, which could increase investor interest in trading these securities. In particular, the Exchanges believe that concentrating the quoted liquidity in the affected securities on the listing exchange will provide liquidity providers with an incentive to quote more competitively on the listing exchange, resulting in narrower bid-ask spreads and greater quoted depth of book. Specifically, the Exchanges believe that liquidity providers will have an incentive to quote more competitively because concentrating the quoted liquidity on the listing exchange would: (i) reduce liquidity providers' risk of adverse selection when quoting in a fragmented market; (ii) provide greater certainty of execution on the one exchange at which liquidity providers are quoting; and (iii) enhance competition for order book priority at the national best bid or offer and throughout the depth of book. In addition, the Exchanges state that concentrating liquidity on the listing exchange could provide the listing exchange with flexibility to innovate with alternative market structures, such as variable tick sizes or periodic batch auctions, that currently are not possible under Regulation NMS when multiple exchanges are

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<sup>11</sup> See proposed Exchange Rule 11.2(c).

<sup>12</sup> See BATS Notice, 80 FR at 29770; BYX Notice, 80 FR at 29782; EDGA Notice, 80 FR at 29773; and EDGX Notice, 80 FR at 29779.

quoting and trading the securities. The Exchanges believe that such alternative market structures could further enhance the market quality of the affected securities.<sup>13</sup>

### III. Summary of Comments Received

The Commission received two comment letters regarding the proposals, both of which supported the proposals.<sup>14</sup> One commenter stated that the proposals were “a reasonable approach to addressing the persistent problem of trading illiquid securities in a fragmented market.”<sup>15</sup> Another commenter stated that the market quality of less liquid securities could be improved if their exchange trading presence was concentrated on the listing exchange.<sup>16</sup> Both commenters expressed support for similar initiatives by other exchanges, with one commenter encouraging other exchanges to consider expanding the scope of less liquid securities that would be subject to a concentrated trading threshold.<sup>17</sup>

One commenter stated that by providing the primary listing exchange with exclusivity in the quoting and trading of thinly-traded securities, the proposals would allow the listing exchange to better innovate its market structure for these securities, which likely would lead to

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<sup>13</sup> See BATS Notice, 80 FR at 29770-29771; BYX Notice, 80 FR at 29782-29783; EDGA Notice at 80 FR at 29773-29774; and EDGX Notice at 80 FR 29779-29780.

<sup>14</sup> See note 6, *supra*. The KCG Letter was addressed to File No. SR-BYX-2015-25, and the SIFMA Letter was addressed to File No. SR-BATS-2015-37. Because the proposals are substantially similar, the Commission believes it is appropriate to consider the comments with respect to all of the proposals.

<sup>15</sup> KCG Letter at 1.

<sup>16</sup> See SIFMA Letter at 1-2.

<sup>17</sup> See SIFMA Letter at 2; KCG Letter at 3. While expressing support for the current proposals, one commenter indicated that it would oppose any proposal to establish concentrated exchange trading for actively traded stocks. The commenter also stated that the initiative to concentrate exchange trading must allow for the continuation of off-exchange trading of illiquid securities which, in the commenter’s view, provides important supplementary benefits to exchange trading. See SIFMA Letter at 2.

improved market quality for the securities.<sup>18</sup> At the same time, the commenter stated that that the voluntary nature of the program should act as a check to assure that the listing exchange does not abuse its monopoly position.<sup>19</sup> The commenter noted, further, that the proposals are an incremental market structure adjustment, unlike other recent initiatives that the commenter characterized as being larger in scope and potentially disruptive.<sup>20</sup>

#### IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes, as amended, are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>21</sup> In particular, the Commission finds that the proposed rule changes, as amended, are consistent with Section 6(b)(5) of the Act,<sup>22</sup> which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, 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.

The Commission believes that the proposals will provide transparency by signaling each Exchange's general intention to voluntarily refrain from trading any security that does not meet the consolidated average daily trading volume threshold established in Rule 11.2(b), and to continue to refrain from trading such a security until the security satisfies the requirements of

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<sup>18</sup> See KCG Letter at 2.

<sup>19</sup> See id.

<sup>20</sup> See id.

<sup>21</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78(b)(5).

Rule 11.2(c). The proposals also make clear that the Exchanges will retain discretion to quote and trade the affected securities.<sup>23</sup> In determining whether to exercise this discretion, the Exchanges have represented that they will consider such factors as member and investor feedback, and whether other non-listing exchanges have decided to cease quoting and trading the affected securities.

The Commission notes that each Exchange is required to notify its members at least one trading day in advance of any securities that it is making unavailable for trading pursuant to Rule 11.2(b), and of any securities it is making available for trading pursuant to Rule 11.2(c).<sup>24</sup> The Commission notes, further, that the Exchanges believe that the proposals potentially could enhance the market quality of the affected securities, and that the commenters similarly supported the proposals as a step toward improving the market quality of less liquid securities.

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<sup>23</sup> See Rule 11.2(c).

<sup>24</sup> See Exchange Rule 11.2(d).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule changes (File Nos. SR-BATS-2015-37; SR-BYX-2015-25; SR-EDGA-2015-19; and SR-EDGX-2015-21), as amended, are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

Robert W. Errett  
Deputy Secretary

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<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).