

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76092; File No. SR-BATS-2015-77)

October 7, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 3.13 (Payment Designed to Influence Market Prices, Other than Paid Advertising)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 23, 2015, BATS Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially 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 BZX Rule 3.13 to conform with: (i) Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5230 for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d-2 under the Act⁵ and (ii) the rules of EDGA

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 17 CFR 240.17d-2.

Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”).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

Pursuant to Rule 17d-2 under the Act,⁷ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (“17d-2 Agreement”). The 17d-2 Agreement covers common members of the Exchange and FINRA (“Common Members”) and allocates to FINRA regulatory responsibility, with respect to Common Members, for the following: (i) examination of Common Members for compliance with federal securities laws, rules and regulations and Exchange rules that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of Common Members for violations of federal securities laws, rules or regulations, and Exchange rules that the Exchange has certified as identical or substantially identical to FINRA rules; and (iii) enforcement of compliance by

⁶ See EDGA Rule 3.13 and EDGX Rule 3.13.

⁷ 17 CFR 240.17d-2.

Common Members with the federal securities laws, rules and regulations, and Exchange rules that the Exchange has certified as identical or substantially similar to FINRA rules.⁸

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical, or substantially similar, to certain FINRA rules that have been identified as comparable. Currently, Exchange Rule 3.13 is not fully incorporated into the 17d-2 Agreement as it does not include exceptions similar to FINRA Rule 5230. Therefore, to conform to comparable FINRA Rule 5230 for purposes of the 17d-2 Agreement, the Exchange proposes to amend Exchange Rule 3.13 to adopt rule text that is substantially similar to FINRA Rule 5230.

Currently, Exchange Rule 3.13 (Payment Designed to Influence Market Prices, Other than Paid Advertising) states that “[n]o Member shall directly or indirectly, give, permit to be given, or offer to give anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service or similar publication of any matter which has, or is intended to have, an effect upon the market price of any security; provided, that the Rule shall not be construed to apply to a matter which is clearly identifiable as paid advertising.”

First, the Exchange proposes to redesignate Rule 3.13 as “Payments Involving Publications that Influence the Market Price of a Security”. This title would mirror that of FINRA Rule 5230. The Exchange also proposes to delete the text of Rule 3.13 in its entirety and replace it with rule text that is substantially similar to FINRA Rule 5230. As amended, paragraph (a) would continue to prohibit Exchange members from directly or indirectly, giving,

⁸ See Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 46498 (Aug. 21, 2008) (approving File No. 10-182).

permitting to be given, or offering to give anything of value to “any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any electronic or other public media, including any investment service or similar publication, website, newspaper, magazine or other periodical, radio, or television program of any matter that has, or is intended to have, an effect upon the market price of any security.” This language is similar to current Rule 3.13. Proposed paragraph (b) would set forth exceptions to the prohibitions under paragraph (a). These exceptions would allow for compensation paid to a person in connection with the publication or circulation of: (i) a communication that is clearly distinguishable as paid advertising, like current Rule 3.13; (ii) a communication that discloses the receipt of compensation and the amount thereof in accordance with Section 17(b) of the Securities Act of 1933; or (iii) a research report, as that term is defined in FINRA Rule 2241.⁹ Proposed paragraph (a) and the exceptions set forth under proposed paragraph (b) are substantially similar to FINRA Rule 5230.¹⁰

The proposed rule text is also identical to EDGA Rule 3.13 and EDGX Rule 3.13.¹¹ In early 2014, the Exchange and its affiliate, BATS Y-Exchange, Inc. (“BYX”), received approval to effect a merger (“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 BZX and BYX, the “BGM Affiliated Exchanges”). In the context of the Merger, the BGM Affiliated

⁹ See FINRA Rule 2241(a)(9) for the definition of the term “research report”.

¹⁰ The only difference between the proposed text of Rule 3.13 and FINRA Rule 5230 is that FINRA Rule 5230 references NASD Rule 2711 while proposed Rule 3.13 references FINRA Rule 2241. This difference reflects the Commission’s approval of a proposed rule change filed by FINRA that replaced NASD Rule 2711 with FINRA Rule 2241. See Exchange Act Release No. 75471 (July 16, 2015), 80 FR 43482 (July 22, 2015) (SR-FINRA-2014-047).

¹¹ EDGA and EDGX have filed proposed rule changes with the Commission to replace references to NASD Rule 2711 in their respective Rules 3.13 with FINRA Rule 2241. See SR-EDGA-2015-38 and SR-EDGX-2015-43. See also supra note 10.

Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposed text of Rule 3.13 is also identical to recent rule changes filed with the Commission by EDGA and EDGX to amend their identical rule text to that proposed herein. This proposed rule change would enable the Exchange to adopt rules that correspond to rules of EDGA and EDGX and provide a consistent rule set across each of the BGM Affiliated Exchanges.¹²

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ 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 securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change would further these requirements by providing greater harmonization between Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the Exchange believes that 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.

In addition, the Exchange believes that the proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in

¹² BYX has filed an identical proposal with the Commission to amend its Rule 3.13. See SR-BYX-2015-41.

¹³ 15 U.S.C. 78f(b)(5).

greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange rules. As such, the Exchange believes that 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. Similarly, the Exchange also believes that, by harmonizing the rules across each BGM Affiliated Exchange, the proposal would enhance the Exchange's ability to fairly and efficiently regulate its members, meaning that the proposed rule change is equitable and would promote fairness in the market place.

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 Exchange believes that the proposed rule change is not designed to address any competitive issues but rather to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Common Members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement. In addition, the Exchange believes that allowing it to implement substantively identical rules across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, EDGX, and EDGA rules of similar purpose.

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 proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ 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 after the date of the filing, 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 Act and Rule 19b-4(f)(6) thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend the rule change if it appears to the Commission that this 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 this action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act¹⁷ 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:

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 C.F.R. 240.19b-4.

¹⁶ Rule 19b-4(f)(6) also requires that the Exchange give the Commission 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 business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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-2015-77 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 No. SR-BATS-2015-77. 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 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-2015-77 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.¹⁸

Robert W. Errett
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).