

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78472; File No. SR-BatsEDGX-2016-35)

August 3, 2016

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.21, Retail Orders, to Conform to the Rules of Bats BZX Exchange, Inc. and Bats BYX 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 July 22, 2016, Bats EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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 filed a proposal to amend Rule 11.21, Retail Orders, to conform to the rules of Bats BZX Exchange, Inc. (“BZX”) and Bats BYX Exchange, Inc. (“BYX”).⁵

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 See BYX Rule 11.24 and BZX Rule 11.25. See Securities Exchange Act Release Nos. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019); 72730 (July 31, 2014), 79 FR 45857 (August 6, 2014) (SR-BYX-2014-013); 73236 (September 26, 2014) 79 FR 59541 (October 2, 2014) (SR-BYX-2014-024); 76207 (October 21, 2015), 80 FR 65824 (October 27, 2015) (SR-BYX-2015-45); 73237 (September 26, 2014), 79 FR 59537 (October 2, 2014) (SR-BATS-2014-043); 73677

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In early 2014, the Exchange and its affiliate, Bats EDGA Exchange, Inc. (“EDGA”), received approval to effect a merger (the “Merger”) of the Exchange’s parent company, Direct Edge Holdings LLC, with Bats Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA, and EDGX, the “BGM Affiliated Exchanges”).⁶ In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system and regulatory functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to amend Exchange Rule 11.21, Retail Orders, to conform to the rules

(November 24, 2014), 79 FR 71150 (December 1, 2014) (SR-BATS-2014-058); and 76205 (October 21, 2015), 80 FR 65828 (October 27, 2015) (SR-BATS-2015-90). The Exchange does not propose to adopt paragraphs (e), (f), (g) and (h) of BYX Rule 11.24 concerning the BYX Retail Price Improvement Program. These paragraphs are also not included in BZX Rule 11.25.

⁶ See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-043; SR-EDGA-2013-034).

of BZX and BYX in order to provide a consistent rule set across each of the BGM Affiliated Exchanges.⁷

First, the Exchange proposes to amend paragraph (a) of Rule 11.21 to include definitions of “Retail Member Organization” and “Retail Order”. Subparagraph (a)(1) would define a Retail Member Organization or RMO as “a Member⁸ (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.” This definition is identical to the definition of Retail Member Organization under BYX Rule 11.24(a)(1) and BZX Rule 11.25(a)(1). The Exchange also proposes to slightly revise and relocate the definition of Retail Order under current Rule 11.21(a). Exchange Rule 11.21(a) currently defines a Retail Order as an agency order or riskless principal order that meets the criteria of the Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) does not originate from a trading algorithm or any other computerized methodology. The Exchange proposes to renumber the definition of Retail Order as subparagraph (a)(2) and revise it to specify that the Retail Order is to be submitted by a Retail Member Organization. The amended definition of Retail Order under Exchange Rule 11.21(a)(2) would be identical to BYX Rule 11.24(a)(2) and BZX Rule 11.25(a)(2).

Second the Exchange proposes to consolidate paragraphs (b) and (c) to Exchange Rule 11.21 into a single paragraph (b) entitled, Retail Member Organization Qualifications and Application. Proposed Exchange Rule 11.21(b) would be identical to BYX Rule 11.24(b) and BZX Rule 11.25(b). Rule 11.21(b)(1) would state that to qualify as a Retail Member

⁷ The Exchange notes that EDGA does not currently include a Retail Order rule.

⁸ See Exchange Rule 1.5(n).

Organization, a Member must conduct a retail business or route retail orders on behalf of another broker-dealer. For purposes of Exchange Rule 11.21, conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.⁹

Current Rule 11.21(b) requires Members to submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a Retail Order comply with the above requirements. The Exchange proposes to incorporate this requirement into proposed Rule 11.21(b)(2). Proposed subparagraph (b)(2) of Rule 11.21 would state that, to become a Retail Member Organization, a Member must submit: (A) an application form; (B) supporting documentation, which may include sample marketing literature, website screenshots, other publicly disclosed materials describing the Member's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition; and (C) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under this Rule. Proposed Rule 11.21(b)(2) is identical to BYX Rule 11.24(b)(2) and BZX Rule 11.25(b)(2).

The Exchange also proposes to adopt subparagraphs (b)(3), (4), (5), and (6) to Rule 11.21, the content of which is identical to BYX Rule 11.24(b)(3), (4), (5), and (6) and BZX Rule 11.25(b)(3), (4), (5), and (6). Subparagraph (b)(3) would state that after an applicant submits the application form, supporting documentation, and attestation, the Exchange shall notify the

⁹ Exchange Rule 11.21 does not currently state that conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis. The Exchange notes that this provision is currently included in BYX Rule 11.24(b)(1) and BZX Rule 11.25(b)(1) and the Exchange proposes to add it to Rule 11.21(b)(1) to ensure this provision of the Exchange, BYX, and BZX rules are fully harmonized.

applicant of its decision in writing. Subparagraph (b)(4) would allow a disapproved applicant to: (A) request an appeal of such disapproval by the Exchange as provided in proposed paragraph (d) discussed below; and/or (B) reapply for Retail Member Organization status 90 days after the disapproval notice is issued by the Exchange. Subparagraph (b)(5) permits a Retail Member Organization to voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Current Rule 11.21(c) states that if the Member represents Retail Orders from another broker-dealer customer, the Member's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Member must: (i) obtain an annual written representation from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange; and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements. The Exchange proposes to incorporate this requirement into proposed Rule 11.21(b)(6). Proposed subparagraph (b)(6) of Rule 11.21 would state that a Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to: (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule; and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. Subparagraph (b)(6) would also require that if a Retail Member Organization does not itself conduct a retail business but routes Retail Orders on behalf of another broker-dealer, the Retail Member Organization's supervisory procedures must be

reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the Retail Member Organization orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements. Proposed subparagraph (b)(6) of Rule 11.21 is identical to BYX Rule 11.24(b)(6) and BZX Rule 11.25(b)(6).

Proposed paragraph (c) to Rule 11.21 would set forth the process for disqualifying a Member as a Retail Member Organization and is identical to BYX Rule 11.24(c) and BZX Rule 11.25(c). Subparagraph (c)(1) would state that if a Retail Member Organization designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of Rule 11.21 above, the Exchange may disqualify a Member from its status as a Retail Member Organization. Subparagraph (c)(2) would state that the Exchange shall determine if and when a Member is disqualified from its status as a Retail Member Organization. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Member. Subparagraph (c)(3) would state that a Retail Member Organization that is disqualified may: (A) appeal such disqualification as provided in paragraph (d) discussed below; and/or (B) reapply for Retail Member Organization status 90 days after the date of the disqualification notice from the Exchange.

Paragraph (d) of Rule 11.21 would mirror BYX Rule 11.24(d) and BZX Rule 11.25(d) by setting forth the processes for Retail Member Organization to appeal a disqualification

determination. Subparagraph (d)(1) would state that if a Member disputes the Exchange's decision to disapprove it under paragraph (b) of Rule 11.21 or disqualify it under paragraph (c) of Rule 11.21, the Member ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Attribution Panel (the "Panel") review the decision to determine if it was correct. Pursuant to subparagraph (d)(2), the Panel will consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Chief Information Officer ("CIO"). Subparagraph (d)(3) states that the Panel shall review the facts and render a decision within the time frame prescribed by the Exchange. Subparagraph (d)(4) would allow the Panel to overturn or modify an action taken by the Exchange under Rule 11.21 and state that a determination by the Panel shall constitute final action by the Exchange.

Lastly, the Exchange proposes to renumber current paragraph (d) to Rule 11.21 as paragraph (e) and current paragraph (e) to Rule 11.21 as paragraph (f) and to replace references to Member with the term Retail Member Organization in both of these paragraphs. Under Rule 11.21(e), Retail Member Organizations will only be able to designate their orders as Retail Orders on either an order-by-order basis using FIX ports or by designating certain of their FIX ports at the Exchange as "Retail Order Ports." Unless otherwise instructed by the Retail Member Organization, a Retail Order will be identified as Retail when routed to an away Trading Center. Under Rule 11.21(f), Retail Member Organizations will continue to be permitted to designate a Retail Order to be identified as Retail on the EDGX Book Feed on an order-by-order basis or to identify all its Retail Orders as Retail on a port-by-port basis where that port is also designated as a Retail Order Port. A Retail Member Organization that instructs the Exchange to identify all its Retail Orders as Retail on a Retail Order Port will continue to be able to override such setting

and designate any individual Retail Order from that port as Attributable or as Non-Attributable, as set forth in Rule 11.6(a).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹⁰ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹¹ because 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. As mentioned above, the proposed rule change would allow the Exchange, BYX, and BZX to provide a consistent set of rules as it relates to Retail Orders and Retail Member Organizations. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on BYX and BZX. The proposed rule change would provide greater harmonization between rules of similar purpose on the Exchange, BYX, and BZX, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. 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. Similarly, the Exchange believes harmonizing these rules across the Exchange, BYX, and BZX promotes just and equitable principles of trade by providing consistent rules regarding Retail Member Organizations and Retail Orders.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

Lastly, the Exchange also believes the proposed qualification standards and review process under Rule 11.21 promote just and equitable principles and are not unfairly discriminatory because they are designed to ensure that Members are properly qualified as a Retail Member Organization and only attribute as Retail those orders that meet the definition of Retail Orders. The qualification process proposed herein by the Exchange is not designed to permit unfair discrimination, but rather ensure that order that are designated to be attributed are Retail are, in fact, order submitted by a retail customer that satisfy the proposed definition of Retail Order. Lastly, the Exchange notes that these qualification and review provisions are substantially similar to those included in the rules of the BYX, BZX, New York Stock Exchange, Inc.'s ("NYSE"), and NYSE MKT LLC ("NYSE MKT") that have been previously approved by the Commission.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. To the contrary, allowing the Exchange to implement substantively identical rules across the Exchange, BYX, and BZX regarding Retail Orders and Retail Member Organizations does not present any competitive issues, but rather is designed to provide greater harmonization among the Exchange, BYX, and BZX rules of similar purpose.

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

¹² See BYX Rule 11.24, BZX Rule 11.25, NYSE Rule 107C, NYSE MKT LLC NYSE MKT Rule 107C, and NYSE Arca, Inc. ("NYSE Arca") Rule 7.44. The Exchange notes that the NYSE, NYSE Arca, and NYSE MKT programs do not allow members to elect that their retail orders be identified as Retail on the exchange's proprietary data feeds.

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: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, 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) of the Act¹³ and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁴ the Exchange has designated this rule filing as non-controversial. The Exchange has given 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.

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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4.

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-BatsEDGX-2016-35 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-BatsEDGX-2016-35. 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-BatsEDGX-2016-35, 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

Robert W. Errett
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).