

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76330; File No. SR-EDGA-2015-41)

November 3, 2015

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rules 3.22, Proxy Voting, and 13.3, Forwarding of Proxy and other Issuer Materials

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 23, 2015, EDGA Exchange, Inc. (the “Exchange” or “EDGA”) 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 Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> 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 restructure and amend Rules 3.22, Proxy Voting, and 13.3, Forwarding or [sic] Proxy and other Issuer Materials, to conform to the rules of BATS Exchange, Inc. (“BZX”) and BATS Y-Exchange, Inc. (“BYX”).<sup>5</sup>

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> See BYX and BZX Rule 13.3.

The text of the proposed rule change is available at the Exchange's website at [www.batstrading.com](http://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

In early 2014, the Exchange and its affiliate, EDGX Exchange, Inc. ("EDGX") 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 the BATS Y-Exchange, Inc. ("BYX", together with BZX, EDGA and EDGX, the "BGM Affiliated Exchanges").<sup>6</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges.

The Exchange provisions regarding proxy delivery and voting are currently included in two separate rules – Rule 3.22 governing proxy voting, and Rule 13.3 governing the forwarding of proxy and other issuer related materials. Conversely, BZX and BYX rules consolidate their proxy delivery and voting requirements into a single rule, Rule 13.3. Thus, the Exchange

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<sup>6</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43; SR-EDGA-2013-34).

proposes to restructure and amend Rules 3.22, Proxy Voting, and 13.3, Forwarding or Proxy and other Issuer Materials, to conform to the corresponding rules of BYX and BZX in order to provide a consistent rule set across each of the BGM Affiliated Exchanges.<sup>7</sup>

In sum, Rule 3.22 limits the circumstances in which a Member may vote a proxy without instructions from beneficial owners while Rule 13.3 requires Members to transmit proxy materials and other communications to beneficial owners of securities. The Exchange notes the provisions of Exchange Rules 3.22 and 13.3 are substantially similar to BYX and BZX Rules 13.3 which also limits the circumstances in which a Member may vote a proxy and requires Members to transmit proxy materials to beneficial owners of securities. Nonetheless, the Exchange proposes to consolidate its proxy rules into a single Rule 13.3 with minor revisions to make the rule identical to the corresponding BYX and BZX Rules 13.3. Each of these revisions are discussed below.

First, the Exchange proposed [sic] to number the current text of Rule 13.3 as paragraph (a) with the following modification: remove reference to Rule 3.22 regarding the definition of “designated investment adviser” under Interpretation and Policy .01 as that rule is to be relocated to Rule 13.3 as described below.

Second, the Exchange proposes to relocate Rule 3.22, Proxy Voting, in its entirety to Rule 13.3 as follows:

- Rule 3.22(a) would be renumbered as Rule 13.3(b) with a revision to subsections (ii) and (iii) to include the phrase “such proxy is given” in order to mirror BZX and BYX Rules 13.3(b). The rule would continue to prohibit Members from

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The Exchange notes that EDGX intends to file an identical proposal with the Commission to restructure and amend its Rules 3.22, Proxy Voting, and 13.3, Forwarding or Proxy and other Issuer Materials, to conform to BYX and BZX Rules 13.3.

giving a proxy to vote stock that is registered in its name, unless: (i) such Member is the beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following.

- Rule 3.22(b) would be renumbered as Rule 13.3(c) with a revision to replace a reference to “SEC” with “Commission” in order to mirror BZX and BYX Rules 13.3(c).
- Rule 3.22(c) would be renumbered as Rule 13.3(d) with a revision to replace a reference to “Rule 13.3” with paragraph (a) of this Rule as the current text of Rule 13.3 is proposed to be numbered as paragraph (a). As amended, Rule 13.3(d) would mirror BZX and BYX Rules 13.3(d).
- Interpretation and Policies to Rule 3.22 would be relocated in its entirety to Rule 13.3 with no changes.

Other than as described above, the Exchange does not propose any additional changes to the relocated text of Rule 3.22. As amended, Exchange Rule 13.3 would be identical to BYX and BZX Rules 13.3. The Exchange believes that the changes described above will help avoid confusion amongst Members of the Exchange that are also members of EDGX, BYX, and BZX by adopting identical rules across the BGM Affiliated Exchanges with regard to proxy delivery and beneficial owner voting.

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are 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.<sup>8</sup> Specifically, the proposed changes are consistent with Section 6(b)(5) of the Act,<sup>9</sup> because they are 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. None of these changes alter the Exchange's current proxy delivery and voting requirements. Rather, as mentioned above, the proposed rule changes, combined with the planned filing for EDGX, would allow the BGM Affiliated Exchanges to provide an identical set of rules as it relates to proxy delivery and voting. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGX, BYZ and/or BZX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, 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 also believes that, by harmonizing the rules across each BGM Affiliated Exchange, the proposal will enhance the Exchange's ability to fairly and efficiently regulate its Members, meaning that the proposed rule change would promote just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.<sup>10</sup> Finally, the Exchange believes that the non-substantive changes discussed above will contribute to the

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> Id.

protection of investors and the public interest by helping to avoid confusion with respect to Exchange Rules.

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 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, BZX, BYX, and EDGX rules of similar purpose. The proposed rule change should, therefore, result in less burdensome and more efficient regulatory compliance as well as a better understanding of Exchange Rules 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: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) 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 Act<sup>11</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business

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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2015-41 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-EDGA-2015-41. 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

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days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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, D.C. 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 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-EDGA-2015-41, 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.<sup>13</sup>

Brent J. Fields  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).