

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76851; File No. SR-EDGA-2015-49)

January 7, 2016

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.17, Registration of Market Makers, and 11.20, Obligations of Market Makers

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 December 24, 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 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 Rules 11.17, Registration of Market Makers, and 11.20, Obligations of Market Makers, in order to update certain provisions and conform to the rules of BATS Exchange, Inc. (“BZX”), BATS Y-Exchange, Inc. (“BYX”), EDGX Exchange, Inc.’s (“EDGX”) equity options trading platform (“EDGX Options”), BZX’s equity options

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).

trading platform (“BZX Options”), and the Nasdaq Stock Market LLC (“Nasdaq”).⁵

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

In early 2014, the Exchange and its affiliate, 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 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 their rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the Exchange proposes to amend Rules 11.17, Registration of Market Makers, and 11.20, Obligations of Market Makers, in order to update certain provisions and conform to

⁵ See BYX and BZX Rules 11.5 and 11.8; BZX Options Rule 22.6(d)(4), (5), and (7); EDGX Options Rule 22.6(d)(4), (5), and (7); and Nasdaq Rules Rule 4613(a)(2)(ii), 4613(a)(2)(D) and (E).

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

the rules of BYX and BZX and provide a consistent rule set across each of the BGM Affiliated Exchanges.⁷ As amended, Exchange Rules 11.17 and 11.20 would be identical to BYX and BZX Rules 11.5 and 11.8 but for different cross references to Exchange Rules that are due to the different rule numbering amongst the Exchange, BYX and BZX.⁸

Rule 11.17, Registration of Market Makers

Like BYX and BZX Rule 11.5, Exchange Rule 11.17 governs the registration of Market Makers on the Exchange. In particular, paragraphs (a) and (b) of Rule 11.17 set forth the application process for Members seeking to register as Market Makers on the Exchange. To harmonize Exchange Rule 11.17(a) with BYX and BZX Rule 11.5(a), the Exchange proposes to replace the word “under” with “of” when referencing Rule 15c3-1 of the Exchange Act. But for different cross-referencing to Exchange rules that are identical or substantially similar to corresponding BYX and BZX rules, this change would make Exchange Rule 11.17 identical to BYX and BZX Rule 11.5.

The Exchange also proposes to amend paragraphs (c)(4) and (e) to update rule cross-references to reflect the renumbering of certain rules as part of an earlier exchange rule filing.⁹ Within paragraph (c)(4) to Rule 11.17, the Exchange proposes to replace reference to Rule 11.19(b)(5) with Rule 11.18(b)(5). The Exchange also proposes to amend paragraph (e) to Rule

⁷ The Exchange notes that EDGX intends to file an identical proposal with the Commission to amend its Rules 11.17 and 11.20 to update certain provisions and conform to BYX and BZX Rules 11.5 and 11.8. The Exchange notes that BYX and BZX intend to file proposed rule changes to make related changes to their Rules 11.5 and 11.8 to conform with the changes proposed herein.

⁸ The Exchange notes that the substance of the rules that are cross-referenced in Rule 11.17 and 11.20 are identical or substantially similar to the corresponding BYX and BZX Rules.

⁹ See Securities Exchange Act Release No. 73592 (November 13, 2014), 79 FR 68937 (November 19, 2014) (SR-EDGA-2014-20).

11.17 to replace references to Rules 11.18, 11.19, and 11.20 with Rules 11.17, 11.18, and 11.19.

Rule 11.20, Obligations of Market Makers

Like BYX and BZX Rules 11.8, Exchange Rule 11.20 sets forth the obligations of Market Makers. In short, Members who are registered as Market Makers in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with these Rules. The Exchange proposes to make the following changes to harmonize Rule 11.20(a), (c), and (d) with BYX and BZX Rule 11.8:

- amend subparagraph (a)(5) to replace in the second sentence the word “entering” with “entry”;
- amend paragraph (c) to replace in the second sentence the word “limits” with “will limit”;
- amend paragraph (d)(1) to: (i) add the phrase “is identified to the Exchange as the interest meeting the obligation and” to the first sentence; (ii) add the word “either” to the fourth sentence; and (iii) add the phrase “or by identifying existing interest on the EDGA Book that will satisfy this obligation” to the last sentence; and
- amend paragraphs (d)(2)(A) and (B) to add to the last sentence of each paragraph the phrase “, or must be able to identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.”

The Exchange also proposes to amend Rule 11.20(d)(1) to clarify the scenarios in which a Market Maker’s two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of BZX Options and

EDGX Options.¹⁰ Proposed Rule 11.20(d)(1)(A) addresses a Market Maker’s ability to satisfy the quoting standard in the event of a technical failure or system limitation. In particular, if a technical failure or limitation of a system of the Exchange prevents the Market Maker from maintaining or communicating to the Exchange timely and accurate quotes in each security in which a Member is registered as a Market Maker, the duration of such failure shall not be considered in determining whether the Market Maker has satisfied the quoting standard with respect to that security.¹¹

In addition, proposed Rule 11.20(d)(1)(B) addresses a Market Maker’s ability to satisfy the quoting standard during a halt, suspension or pause. A Market Maker’s quoting obligation under Rule 11.20 would be suspended during a trading halt, suspension, or pause in the security.¹² A Market Maker’s quoting obligation would re-commence after the first regular way transaction on the primary listing market following such halt, suspension, or pause in the security, as reported by the responsible single plan processor.¹³ A Market Maker’s quoting obligation would also be suspended under Rule 11.20(d)(1)(B) for the duration that an NMS stock is in a Limit State or a Straddle State declared pursuant to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the

¹⁰ See BZX Options Rule 22.6(d)(4), (5), and (7). See also EDGX Options Rule 22.6(d)(4), (5), and (7).

¹¹ See Securities Exchange Act Release No. 71229 (December 18, 2013), 78 FR 77736 (December 24, 2013) (SR-BATS-2013-062) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify BATS Options Market Maker Continuous Quoting Obligation Rules).

¹² The Exchange notes that proposed Rule 11.20(d)(1)(B) would differ from BZX Options and EDGX Options Rules 22.6(d)(5) in so far as proposed Rule 11.20(d)(1)(B) references “security” rather than “underlying security” in order to conform to the equities markets.

¹³ See also Nasdaq Stock Market LLC (“Nasdaq”) Rule 4613(a)(2)(ii).

“Limit Up-Limit Down Plan” or “Plan”).¹⁴

Under proposed Rule 11.20(d)(1)(C), the Exchange would have the ability to consider other exceptions to the Two-Sided Obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. For example, a Market Maker must implement the pre-trade and other risk controls required by Rule 15c3-5 of the Act (the “Market Access Rule”) with respect to all of their quoting activity. These pre-trade risk controls must be reasonably designed to systemically limit financial exposure and ensure compliance with all regulatory requirements. The risk controls a Market Maker may have in place to comply with the Market Access Rule may prevent that Market Maker from satisfying its quoting obligation. In such case, the Exchange would consider whether the Market Maker’s failure to satisfy its quoting obligation due to its compliance with the Market Access Rule was proper.

Lastly, the Exchange proposes to amend its definitions of “Designated Percentage” and “Defined Limit” under Rules 11.8(d)(2)(D) and (E) respectively to be substantially similar to Nasdaq Rules 4613(a)(2)(D) and (E). The pricing obligations applicable to quotations of Market Makers are based on the Designated Percentage and the Defined Limit, which are determined based on the applicable trigger percentage. The amended definitions would include additional specificity and updated descriptions of the categories of securities that are subject to those percentages. Notably, the Exchange proposes to replace references to the terms Original Circuit Breaker Securities (defined below) with Tier 1 or Tier 2 NMS Stocks under the Limit Up-Limit Down Plan (also defined below), as the Exchange believes these terms more accurately describe the securities to which a certain percentage applies. The Exchange is not proposing new

¹⁴ See EDGA and EDGX Rules 11.16(e). See also BZX and BYX Rules 11.18(e). Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to that of Nasdaq in order to provide consistent rules with regard to Market Maker's quoting obligations.¹⁵ The Exchange believes consistent definitions would avoid confusion amongst market participants that make markets on multiple venues.

The Exchange currently defines Designated Percentage under Rule 11.20(d)(2)(D) as 8% with respect to securities included in the S&P 500[®] Index and the Russell 1000[®] Index, as well as a pilot list of Exchange Traded Products for securities subject to an individual stock pause trigger under the applicable rules of a primary listing market ("Original Circuit Breaker Securities"). For times during Regular Trading Hours¹⁶ when stock pause triggers are not in effect under the rules of the primary listing market, the Designated Percentage shall be 20% for Original Circuit Breaker Securities. Under Rule 11.20(d)(2)(E), the Designated Percentage shall be 28% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than \$1.00, and 30% for all NMS securities that are not Original Circuit Breaker Securities with a price less than \$1.00.

¹⁵ The Exchange proposed to categorize securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products as Tier 1 NMS Stocks under the under the Limit Up-Limit Down Plan. Securities not included in the S&P 500[®] Index, Russell 1000[®] Index, or in the pilot list of Exchange Traded Products would be categorized as Tier 2 NMS Stocks under the under the Limit Up-Limit Down Plan. Nasdaq Rule 4613(a)(2)(D) and (E) references securities as included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products as such and those that are not as Tier 2 NMS Stocks. The Exchange notes that BYX and BZX also intent to amend their definitions of Designated Percentage and Defined Limit to mirror that proposed herein.

¹⁶ See Exchange Rule 1.5(y).

As amended, Designated Percentage would be defined solely under Exchange Rule 11.20(d)(2)(D) as 8% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan,¹⁷ 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan¹⁸ with a price equal to or greater than \$1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than \$1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.16(e) is not in effect, the Designated Percentage shall be 20% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than \$1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than \$1.00.

The Exchange currently defines Defined Limit under Rule 11.20(d)(2)(F) and (G) as 9.5% for Original Circuit Breaker Securities. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit shall be 21.5% for Original Circuit Breaker Securities. The Defined Limit is 29.5% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than \$1.00, and 31.5% for all NMS securities that are not Original Circuit Breaker Securities with a price less than \$1.00.

As amended, subparagraphs (d)(2)(F) and (G) of Exchange Rule 11.20 would be deleted and Defined Limit would be defined solely under Exchange Rule 11.20(d)(2)(E) as 9.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the

¹⁷ Tier 1 NMS Stocks under the Limit Up-Limit Down Plan are securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. See the Limit Up-Limit Down Release supra note 14.

¹⁸ Tier 2 NMS Stocks under the Limit Up-Limit Down Plan are securities that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. Id.

Limit Up-Limit Down Plan with a price equal to or greater than \$1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than \$1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.16(e) is not in effect, the Defined Limit shall be 21.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than \$1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than \$1.00. Exchange Rule 11.8(d)(2)(E) also states that for times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit will be 21.5% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. The Defined Limit will remain the same throughout Regular Trading Hours for all other NMS stocks.

The Exchange proposes to delete Interpretation and Policy .01 to Rule 11.20 as its content is not included in BYX and BZX Rules 11.8 and its requirement to furnish records to the Exchange are duplicative with current Exchange Rule 4.2.

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.¹⁹ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,²⁰ 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

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

public interest. As mentioned above, the proposed rule changes, combined with the planned filing for the BYX, BZX, and EDGX would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the registration and obligations of Market Makers. Consistent rules, in turn, will simplify the regulatory requirements for Market Makers on the Exchange that are also Market Makers on EDGX, BZX, and/or BYX. 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 Market Makers by utilizing a consistent rule set and obligations across each of the BGM Affiliated Exchanges. Consistent rules would enable the Exchange to apply identical standards to that of its affiliates, alleviating confusion by Market Makers on who may also be registered as such on BYX, BZX, or EDGX, thereby promoting just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.²¹

The Exchange also believes the proposed amendments to Rule 11.8(d) are consistent with Section 6(b)(5) of the Act,²² 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. The

²¹ Id.

²² 15 U.S.C. 78f(b)(5).

proposed amendments to Rule 11.8(d)(1) are meant to clarify the scenarios in which a Market Maker's two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of the BZX Options, EDGX Options and Nasdaq.²³ The Exchange believes it is appropriate to have consistent rules across its equities and options platforms. Consistent rules would aid in alleviating confusion amongst those that are Members on both platforms. The Exchange believes it is reasonable to suspend or alleviate a Market Maker's quoting obligations in the event of a technical or system limitation, during a trading halt, suspension or pause, as well as where demonstrated legal or regulatory requirements prevent the Market Maker from quoting. In each scenario, the Exchange will review the reasons behind the Market Maker inability to quote for compliance with the Rule. The Exchange is not proposing new percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to those of Nasdaq in order to provide a consistent rules with regard to Market Makers quoting obligations.

(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 each of the BGM Affiliated Exchanges regarding Market Maker registration and their obligations does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, BZX, and EDGX rules of similar purpose. The proposed rule change should, therefore, result in less burdensome and more efficient regulatory compliance and understanding of Exchange Rules for common members of the BGM Affiliated Exchanges and an enhanced

²³ See supra notes 10 and 13.

ability of the BGM Affiliated Exchanges to fairly and efficiently regulate Market Makers.

(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 Act²⁴ and Rule 19b-4(f)(6)²⁵ thereunder. 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,

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 Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved

IV. Solicitation of Comments

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(6).

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:

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-EDGA-2015-49 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-EDGA-2015-49. 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 am and 3:00 pm. 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-EDGA-2015-

49 and should be submitted on or before [insert 21 days from publication in the Federal Register].

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

Robert W. Errett
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).