

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73188; File No. SR-BATS-2014-041)

September 23, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.9 of BATS Exchange, Inc.

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 September 12, 2014, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to provide additional functionality with respect to Primary Pegged Orders offered by the Exchange pursuant to Rule 11.9(c)(8).

The text of the proposed rule change is available at the Exchange’s website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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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).

**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**

Earlier this year, the Exchange and its affiliate BATS Y-Exchange, Inc. (“BYX”) received approval to effect a merger (the “Merger”) of the Exchange’s parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX Exchange, Inc. (“EDGX”) and EDGA Exchange, Inc. (“EDGA”, and together with BZX, BYX and EDGX, the “BGM Affiliated Exchanges”).<sup>5</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposals set forth below are intended to add certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges. The functionality is also similar to functionality offered by the Nasdaq Stock Market LLC and NYSE Arca, Inc.<sup>6</sup> The purpose of the proposed rule change is to provide Users of the Exchange with additional options with respect to Primary Pegged Orders (as defined below) offered by the Exchange

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<sup>5</sup> See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

<sup>6</sup> See Nasdaq Rule 4751(f)(4); NYSE Arca Equities Rule 7.31(cc).

pursuant to Rule 11.9(c)(8). The Exchange notes that EDGA and EDGX offer additional functionality for Pegged Orders that the Exchange is not proposing to add at this time.<sup>7</sup>

The Exchange currently allows Users to submit two types of limit orders to the Exchange that are pegged to and priced based on the national best bid or offer (“NBBO”) and automatically adjusted by the Exchange’s System.<sup>8</sup> First, a “Primary Pegged Order,” which is pegged to a price inferior to or equal to the inside quote on the same side of the market (*i.e.*, for a bid, pegged to the NBB or for an offer, pegged to the NBO) by an amount set by the User. Second, a “Market Pegged Order,” which is pegged to a price that offsets the inside quote on the other side of the market (*i.e.*, for a bid, pegged to the NBO or for an offer, pegged to the NBB) by an amount set by the User.

At the outset, the Exchange notes that it proposes to modify the definition of Primary Pegged Order to make it more understandable and consistent with the definition of Market Pegged Order by adding a definition of “Primary Offset Amount”, which would mean the amount of the offset selected by the User for a Primary Pegged Order. The Exchange proposes to retain the definition of “Offset Amount,” which would mean the amount of the offset selected by the User for a Market Pegged Order. The Exchange also proposes two substantive changes to Primary Pegged Orders, as described below.

First, pursuant to current Rule 11.9(c)(8), neither type of Pegged Order is eligible to be displayed on the Exchange. The Exchange proposes to maintain this restriction for Market

<sup>7</sup> For instance, EDGA and EDGX currently permit displayed Market Pegged Orders as well as aggressive offsets for displayed Primary Pegged Orders (as such terms are defined below). The Exchange is not proposing to add these features. The Exchange anticipates EDGA and EDGX will propose to eliminate these features in the future.

<sup>8</sup> As defined in Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

Pegged Orders but to permit Primary Pegged Orders to be displayed on the Exchange provided that they cannot be more aggressive than the NBB or NBO to which they are pegged, as described below.

Second, the Exchange proposes to modify the offset that a User can select for a Primary Pegged Order by specifying that such amount is an offset, rather than requiring that the order be inferior to or equal to the inside quote on the same side of the market. This change to Primary Pegged Orders, therefore, would allow Users to select a Primary Offset Amount that would make a Primary Pegged Order more aggressive than the NBB or NBO to which it is pegged (*i.e.*, for a bid, willing to pay a higher price or for an offer, willing to sell for a lower price). However, as noted above, the Exchange proposes to restrict the designation of a Primary Offset Amount that would price a Primary Pegged Order higher than the NBB for a bid or lower than the NBO for an offer to non-displayed Primary Pegged Orders. Thus, as proposed, the Primary Offset Amount for a displayed Primary Pegged Order must result in the price of such order being inferior to or equal to the inside quote on the same side of the market. The Exchange is not proposing to accept displayed Primary Pegged Orders with an aggressive offset at this time because such orders would add functionality to the Exchange that would effectively set the NBBO through a Pegged Order and the Exchange believes that this could potentially add complexity to its System.

As an example of an order with a Primary Pegged Order that a User has designated for display, assume the Exchange receives a display-eligible Primary Pegged Order to buy 300 shares of a security with a Primary Pegged Offset to price the order at \$0.01 below the NBB. Assume further that the NBBO is \$10.09 by \$10.10 when the order is received. The Exchange will post and display the order on the Exchange as a bid to buy 300 shares at \$10.08. If the NBBO moves to \$10.10 by \$10.11, the Exchange will adjust to \$10.09 the price of the Primary

Pegged Order to buy. If the NBBO then moved to \$10.08 by \$10.11, the Exchange will adjust to \$10.07 the price of the Primary Pegged Order to buy.

A User could alternatively submit a display-eligible Primary Pegged Order to buy with no Primary Pegged Offset, in which case the initial display price of the order would be \$10.09, upon the first adjustment to the NBBO the display price would be \$10.10, and upon the final adjustment to the NBBO the display price would be \$10.08.

A User could not submit a display-eligible Primary Pegged Order to buy with a Primary Pegged Offset to price the order at \$0.01 above the NBB, as this would make the order more aggressive than the NBB, and, as proposed, the Exchange will not accept Primary Pegged Orders that are both eligible for display and contain an aggressive Primary Pegged Offset amount.

A User could, however, submit a non-display-eligible Primary Pegged Order to buy with a Primary Pegged Offset to price the order at \$0.01 above the NBB. Thus, using the example above, the initial ranked price of the order would be \$10.10 (\$0.01 higher than the NBB of \$10.09), upon the first adjustment to the NBBO the adjusted ranked price of the order would be \$10.11 (\$0.01 higher than the NBB of \$10.10), and upon the final adjustment to the NBBO the adjusted ranked price of the order would be \$10.09 (\$0.01 higher than the NBB of \$10.08).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

protect investors and the public interest.

Specifically, the proposed changes are designed to provide Users with additional control over their orders that are pegged to the NBBO. The proposal to permit the display of Primary Pegged Orders is consistent with the Act as this proposal is intended to lead to additional displayed liquidity available on the Exchange, thus contributing to the price discovery process. The proposal to permit an aggressive offset on non-displayed Primary Pegged Orders is similarly consistent with the Act as this proposal is intended to allow Users adding liquidity to the Exchange to more aggressively price their orders, which, in turn, means an enhanced likelihood of price improvement for incoming orders that execute against such orders. For instance, by permitting a User to designate a Primary Pegged Order to buy on the Exchange with an aggressive Primary Pegged Offset, that means that the Exchange has non-displayed liquidity priced better than the NBB, which amounts to significant price improvement as compared to the NBB. For the reasons described above, the proposals are directly targeted at removing impediments to and perfect the mechanism of a free and open market and national market system.

The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>11</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. In particular, the proposed rule changes to modify the Primary Pegged Order is intended to add system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for the BGM Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BYX, EDGA and/or

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<sup>11</sup> 15 U.S.C. 78k-1(a)(1).

EDGX. The functionality is similar to functionality offered by Nasdaq and NYSE Arca as well. The proposed rule changes would also provide Users with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. The Exchange also believes that the changes to restructure the existing rule will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges. The Exchange also believes that Pegged Orders generally encourage competition by allowing Users to submit orders that automatically peg to the NBBO consistent with their trading strategy.

**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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> 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 prior to 30 days from the date on which it was filed, 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)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will allow the Exchange to align its re-route functionality across the BGM Affiliated Exchanges in a timely manner, thereby simplifying the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BYX, EDGA and/or EDGX. The Exchange further believes that waiver will allow the Exchange to continue to strive towards a complete technology integration of the BGM Affiliated Exchanges. The Commission believes that waiver of the operative delay is consistent with investor protection and the public interest. As a result, the Commission hereby waives the 30-day operative delay and designates the proposal operative

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

upon filing.<sup>16</sup>

#### 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-BATS-2014-041 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-BATS-2014-041. 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

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(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-BATS-2014-041, 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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