

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76015; File No. SR-BATS-2015-76)

September 29, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Restructure and Amend Rule 11.17, Clearly Erroneous Executions

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 September 21, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 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 Rule 11.17, Clearly Erroneous Executions, in order to conform to the rules of EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”).³

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See EDGA and EDGX Rule 11.15.

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, 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 and EDGA (together with BZX, BYX and EDGX, the “BGM Affiliated Exchanges”).⁴ 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 restructure and amend Rule 11.17, Clearly Erroneous Executions, in order to conform to the corresponding rules of EDGA and EDGX and provide a consistent rule set across each of the BGM Affiliated Exchanges.⁵

Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to BATS Rule 11.17 to provide for uniform treatment: (1) of clearly erroneous⁶ execution reviews in

⁴ See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

⁵ The Exchange notes that BYX intends to file an identical proposal with the Commission to restructure and amend its Rule 11.17, Clearly Erroneous Executions, to conform to EDGA and EDGX Rules 11.15.

⁶ The terms of a transaction executed on the Exchange are “clearly erroneous” when there

multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.⁷ The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17,⁸ and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or the “Plan”).⁹ In 2014, the Exchange adopted two additional provisions providing that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions (the “Multi-Day Event”); and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.¹⁰

is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by the Exchange to be clearly erroneous will be removed from the Consolidated Tape. See Exchange Rule 11.17(a).

⁷ Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR-BATS-2010-016).

⁸ Id.

⁹ See Securities Exchange Act Release No. 68797 (Jan. 31, 2013), 78 FR 8635 (Feb. 6, 2013) (SR-BATS-2013-008); see also current BATS Rule 11.17(h).

¹⁰ See Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25,

Proposed Amendments to Rule 11.17

First, the Exchange proposes to add new subparagraph (h) to Rule 11.17 which would describe the process for nullifying trades in UTP Securities that are the subject of an initial public offering (“IPOs”). The provisions of proposed paragraph (h) are substantially similar to EDGA and EDGX Rules 11.15(h) and differs only to the extent to conform to existing phrasing and terminology within other provisions of Rule 11.17.¹¹

Pursuant to Rule 12f-2 of the Securities Exchange Act of 1934,¹² the Exchange may extend unlisted trading privileges to a security that is the subject of an IPO when at least one transaction in the subject security has been effected on the national securities exchange or association upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan. Under proposed paragraph (h), a clearly erroneous error may be deemed to have occurred in the opening transaction of the subject security if the execution price of the opening transaction on the Exchange is the lesser of \$1.00 or 10% away from the opening price on the listing exchange or association. In such circumstances, the Officer of the Exchange or other senior level employee designee shall declare the opening transaction null and void or shall decline to take action in connection with the completed trade(s). Clearly erroneous executions of subsequent transactions of the subject security will be reviewed in the same manner as the procedure set forth in Exchange Rule 11.17(e)(1). Absent extraordinary

2014) (SR-BATS-2014-014).

¹¹ The Exchange notes that EDGA and EDGX are to file rule changes with the Commission to propose a series of ministerial changes to their Rules 11.15, Clearly Erroneous Executions, to conform with other provisions of BZX and BYX Rule 11.17 to ensure each of the BGM Affiliated Exchange have identical rule text with regard to the review and handling of clearly erroneous executions. This filing would include changes to EDGA and EDGX Rules 11.15(h) to mirror Exchange Rule 11.17(h) as proposed herein.

¹² 17 CFR 240.12f-2.

circumstances, any such action of the Officer of the Exchange or other senior level employee designee pursuant to proposed subparagraph (h) shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or other senior level employee designee must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. Each party involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of Exchange Rule 11.17(e)(2). As stated above, proposed paragraph (h) is substantially similar to EDGA and EDGX Rules 11.15(h) and differs only to the extent to conform to existing phrasing and terminology within other provisions of Rule 11.17.

The Exchange also proposes the following ministerial amendments to Rule 11.17 as a result of proposing new paragraph (h). First, the Exchange proposes to renumber current paragraph (h) as (i), current paragraph (i) as (j), and current paragraph (j) as (k). In addition, the Exchange proposes to update the references to these paragraph in the introductory section of Rule 11.17 to reflect these changes and the addition of proposed paragraph (h).

Lastly, the Exchange proposes the following changes to further conform Rule 11.17 to EDGA and EDGX Rules 11.15:

- Amend paragraph (e)(1) to clarify that a determination made pursuant to this paragraph shall be made generally within thirty (30) minutes of receipt of the complaint, but in no case later than the start of Regular Trading Hours on the following trading day, rather than simply stating the following day. This proposed change would make paragraph (e)(1) identical to EDGA and EDGX

Rule 11.15(e)(1).

- Amend paragraph (e)(2)(A) to define CRO as the “Exchange’s Chief Regulatory Officer”. This proposed change would make paragraph (e)(2)(A) identical to EDGA and EDGX Rule 11.15(e)(2)(A).

Amend paragraph (e)(2)(F) to replace the term “Officer” with “Official” in order to use consistent terminology throughout Rule 11.17.

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.¹³ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁴ 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 changes, combined with the planned filing for the BYX, EDGA, and EDGX, would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to clearly erroneous executions. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGA, EDGX 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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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 is equitable and will promote fairness in the market place.

Finally, the Exchange believes that the non-substantive, ministerial changes discussed above will contribute to the 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 substantively identical rules across each of the BGM Affiliated Exchanges regarding clearly erroneous executions does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, EDGX, and EDGA 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 ability of the BGM Affiliated Exchanges to fairly and efficiently regulate Members.

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 designated this rule filing as non-controversial under Section

19(b)(3)(A) of the Act¹⁵ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁶ The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not 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; provided that the self-regulatory organization 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 may summarily 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 C.F.R. 240.19b-4.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2015-76 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-2015-76. 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, 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-2015-76, 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.¹⁷

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).