

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77637; File No. SR-BatsEDGA-2016-06)

April 18, 2016

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Exchange Rule 14.10 Setting Forth Additional Requirements for the Listing of Securities that are Issued by the Exchange or any of its Affiliates

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 April 13, 2016, Bats 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 adopt Exchange Rule 14.10 setting forth additional requirements for the listing of securities that are issued by the Exchange or any of its affiliates as well as the monitoring of such securities’ trading activity on the Exchange. Proposed Rule 14.10 is based on Bats BZX Exchange, Inc. (“BZX”) Rule 14.3(e), which was recently amended and

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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).

filed for immediate effectiveness with the Commission.<sup>5</sup>

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

The Exchange is proposing to adopt Rule 14.10 setting forth reporting requirements on the Exchange should the Exchange or EDGA Affiliate list a security on the Exchange (the "Affiliate Security"). Proposed Rule 14.10(a)(1) would define "EDGA Affiliate" as "the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where "control" means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity." Proposed Rule 14.10(a)(2) would define

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<sup>5</sup> See SR-BatsBZX-2016-08 (filed for immediate effectiveness on April 13, 2016). See also Securities Exchange Act Release No. 66580 (March 13, 2012), 77 FR 16110 (March 19, 2012) (SR-BATS-2012-012).

“Affiliate Security” as “any security issued by an EDGA Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depositary Receipts as defined in Rule 14.8(d) and Investment Company Units as defined in Rule 14.2.”<sup>6</sup>

In the event that an EDGA Affiliate seeks to list an Affiliate Security, paragraph (b)(1) of proposed Rule 14.10 would require that prior to the initial listing of the Affiliate Security on the Exchange, Exchange personnel shall determine that such security satisfies the Exchange’s rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the Exchange’s Board of Directors.

Proposed paragraph (b)(2) of proposed Rule 14.10 would state that throughout the continued listing of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report for the Regulatory Oversight Committee of the Exchange’s Board of Directors and that such report describe the Exchange’s monitoring of the Affiliate Security’s compliance with the Exchange’s listing standards. Sub-paragraph (A) of proposed Rule 14.10(b)(2) would require the report include a description of the Affiliate Security’s compliance with the Exchange’s minimum share price requirement, and, sub-paragraph (B) would require the report to describe the Affiliate Security’s compliance with each of the quantitative continued listing requirements.

Sub-paragraph (3) of proposed Rule 14.10(b) would require the Exchange to commission an annual review and report by an independent accounting firm of the compliance of the Affiliate Security with the Exchange’s listing requirements. The Exchange would be required to promptly furnish a copy of this annual report to the Regulatory Oversight Committee of the Exchange’s

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<sup>6</sup> The Exchange notes that BZX Rule 14.3(e)(1)(B) excludes Index Fund Shares as defined under BZX Rule 14.11(c). The Exchange rules do not currently define Index Fund Shares. Therefore, the Exchange proposes to exclude Investment Company Unit as defined under Exchange Rule 14.2 as it believes Investment Company Units to be synonymous with Index Fund Shares.

Board of Directors.

Sub-paragraph (4) of proposed Rule 14.10(b) would state that in the event the Exchange determines that the EDGA Affiliate is not in compliance with any of the Exchange's listing standards, the Exchange is required to notify the issuer of such non-compliance promptly and request a plan of compliance. The Exchange would also be required to file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The required report would identify the date of the non-compliance, type of non-compliance, and any other material information conveyed to the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, the Exchange would again be required to notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange's listing standards, if any.

Sub-paragraph (c) of proposed Rule 14.10 would require that throughout the trading of an Affiliate Security on the Exchange, the Exchange prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange's Board of Directors that describes the Exchange's monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Exchange Rules, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules.

Lastly, paragraph (d) of proposed Rule 14.10 would require the Exchange to promptly provide a copy of the reports required by sub-paragraphs (b) and (c) described above to the

Commission.

The listing of an Affiliate Security or where an Affiliate Security is traded on the Exchange could potentially create a conflict of interest between the Exchange's self-regulatory responsibility to vigorously oversee the listing and trading of the stock on its market, and its own commercial or economic interests. Such "self-listing" may raise questions as to the Exchange's ability to independently and effectively enforce its rules against an affiliate or the operator/owner of its facility. In addition, such listing has the potential to exacerbate possible conflicts that may arise when the Exchange oversees competitors that may also be listed or traded on the Exchange. The Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission with respect to the Exchange's oversight of the listing and trading on the Exchange of any EDGA Affiliate Security, will help protect against any concern that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirements that an independent accounting firm review such issuer's compliance with the Exchange's listing standards adds a degree of independent oversight to the Exchange's regulation of the listing of these securities and should help mitigate against any potential or actual conflicts of interest. The Exchange also believes that these additional requirements contained in the proposed rule change would provide additional assurance that any Affiliate Securities listed and traded on the Exchange by an EDGA Affiliate comply with the Exchange's listing standards and trading rules on an on-going basis. Finally, the Exchange believes that the proposed rule change would eliminate any perception of a potential conflict of interest if an EDGA Affiliate seeks to list a security on the Exchange or if an Affiliate Security is traded on the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal 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.<sup>7</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirement that an independent accounting firm review such issuer's compliance with the Exchange's listing standards adds a degree of independent oversight to the Exchange's regulation of the listing of these securities, which may mitigate any potential or actual conflicts of interest. Further, the additional requirements contained in the proposed rule change would help to provide additional assurance: (i) that any Affiliate Securities listed on the Exchange by an EDGA Affiliate comply with the Exchange's listing standards both upon the initial listing of the EDGA Affiliate and on an on-going basis; and (ii) regarding the Exchange's monitoring of the trading of the Affiliate Security traded on the Exchange. The Exchange believes that the

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

proposed rule change would eliminate any perception of a potential conflict of interest if an EDGA Affiliate seeks to list a security on the Exchange and where an Affiliate Security is traded on the Exchange.

(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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather set forth the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange.

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

Written comments were neither solicited nor received.

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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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 for 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<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>12</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief

A proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to 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 states that waiver of the operative delay will allow the Exchange to implement the proposed rule change immediately in the event an Affiliate seeks to list on the Exchange or an Affiliate Security is traded on the Exchange. The Exchange further states that providing the reports required by the rule is in the best interest of investors and the public interest because it would provide greater transparency to market participants regarding the controls in place to address the potential conflicts of interest that may arise in the listing and trading of Affiliate Securities on the Exchange. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>15</sup> The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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

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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. The Exchange has satisfied this requirement.

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

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

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

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-BatsEDGA-2016-06 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-BatsEDGA-2016-06. 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-BatsEDGA-2016-06 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>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).