

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79236; File No. SR-BatsEDGX-2016-59)

November 3, 2016

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend EDGX Rule 2.5, Restrictions, Regarding Members and Associated Persons of Members Who Are or Become Subject to a Statutory Disqualification

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 24, 2016, Bats EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 amend EDGX Rules regarding Members and associated persons of Members who are or become subject to a statutory disqualification.

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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).

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 purpose of the proposed rule change is to amend Rule 2.5 (Restrictions) to add language which provides the Exchange with the discretion to determine whether to permit a person to become a Member or an associated person of a Member or continue as a Member or in association with a Member on the Exchange.

Currently, Rule 2.5 restricts any persons from becoming a Member or continuing as a Member where (1) such person is other than a natural person and is not a registered broker or dealer, (2) such person is a natural person who is not either a registered broker or dealer or associated with a registered broker or dealer, (3) such person is subject to a statutory disqualification,<sup>5</sup> except that a person may become a Member or continue as a Member where,

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<sup>5</sup> The Exchange uses the definition of statutory disqualification set forth in the Act. See Exchange Rule 1.5(bb); 15 U.S.C. 78c(a)(39).

pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act,<sup>6</sup> the Commission has issued an order providing relief from such a disqualification and permitting such a person to become a Member, or (4) such person is not a member of another registered national securities exchange or association.

The Exchange notes that the proposed rule changes below are substantially similar to the rules of the International Securities Exchange (“ISE”),<sup>7</sup> the rules of the Chicago Board Options Exchange (“CBOE”),<sup>8</sup> and a recent amendment made by the BOX Options Exchange LLC (“BOX”).<sup>9</sup>

The Exchange first proposes to amend the language of Rule 2.5 to give itself the discretion to determine if a restriction on a Member becoming or continuing on as a Member is appropriate. The Exchange also proposes to make clear that the limitations of Rule 2.5 are equally applicable to persons associated with Members as they are to Members.

The Exchange then proposes to amend Rule 2.5(a)(3) to delete the language that allows a person to become a Member or continue as a Member where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act,<sup>10</sup> the Commission has issued an order providing relief from such a disqualification and permitting such a person to become a Member. The Exchange does not

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<sup>6</sup> See 17 CFR 240.19d-1, 17 CFR 240.19d-2, 17 CFR 240.19d-3, and 17 CFR 240.19h-1.

<sup>7</sup> See ISE Rule 302; Securities Exchange Act Release No. 42455, 65 FR 11401 (March 2, 2000) (Order Granting Registration as a National Securities Exchange).

<sup>8</sup> See CBOE Rule 3.18; Securities Exchange Act Release No. 43056 (July 19, 2000), 65 FR 46524 (July 28, 2000) (SR-CBOE-1999-15) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Membership Rules).

<sup>9</sup> See BOX Rule 2040; Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR-BOX-2016-26).

<sup>10</sup> See *supra*, note 6.

believe that this language reflects the Commission's current review process, as an order is not necessarily required in every instance.

The Exchange then proposes to add three more situations with regard to whether a person may become a Member or continue as a Member in any capacity on the Exchange. The additional restrictions are when: (1) such person fails to meet any of the qualification requirements for becoming a Member or associated with a Member after approval thereof; (2) such person fails to meet any condition placed by the Exchange on such Member or association with a Member; and (3) such person violates any agreement with the Exchange. The Exchange proposes these additions in order to allow the Exchange more discretion in its determination as to whether a person may become or continue as a Member or in association with a Member. The Exchange notes that the Exchange must act consistent with the protection of investors and in the public interest and is prohibited from unfairly discriminating against Members or prospective Members.<sup>11</sup> Further, any prospective Member that has been denied membership in the Exchange or barred from becoming associated with a Member is entitled to certain due process pursuant to Chapter X of the Exchange's rules, which includes, but is not limited to, potential review by the Commission.<sup>12</sup>

The Exchange also proposes to add language with regard to a Member or associated person that becomes subject to a statutory disqualification under the Act. The proposed rule would allow a Member or associated person who becomes subject to a statutory disqualification and who wants to continue as a Member of the Exchange or in association with a Member, to

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<sup>11</sup> See 15 U.S.C. 78f(b)(5).

<sup>12</sup> See Chapter X of the Exchange's Rules.

submit a request to the Exchange seeking to continue as a Member or in association with a Member notwithstanding the statutory disqualification.<sup>13</sup>

The Exchange also proposes to add language which allows Members and associated persons whose request to become a Member or associated with a Member is denied or conditioned, or any person whose association with a Member is denied or conditioned pursuant to the restrictions codified in Rule 2.5(a), and any Member or person associated with a Member who is not permitted to continue as a Member or be an associate with a Member or to which association is conditioned to seek review under the provisions of the Exchange Rules relating to adverse actions.<sup>14</sup>

Lastly, the Exchange proposes to add Interpretation and Policy .05, which will allow the Exchange to waive the provisions of Rule 2.5 when a proceeding is pending before another self-regulatory organization (“SRO”) to determine whether to permit a Member or associated person to continue membership or association notwithstanding a statutory disqualification. The Exchange notes that this proposed rule change is substantially similar to the comparable rules of the CBOE,<sup>15</sup> and the rules of BOX, as amended.<sup>16</sup> Further, in the event the Exchange determines to waive the provisions of this Rule with respect to a Member or associated person, the Exchange shall determine whether the Exchange will concur in any Exchange Act Rule 19h-1 filing made by another SRO with respect to the Member or associated person.

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<sup>13</sup> The Member or person associated with a Member must submit the request within thirty (30) days of becoming subject to a statutory disqualification.

<sup>14</sup> See Chapter X of the Exchange’s Rules.

<sup>15</sup> See Interpretation and Policy .01 to CBOE Rule 3.18.

<sup>16</sup> See IM-2040-8 to BOX Rule 2040.

## 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>17</sup> In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in that 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.

The Exchange believes that the proposed rule changes are consistent with the requirements above. Specifically, the Exchange believes the proposed changes will better enable the Exchange to use its discretion in determining whether a person may become or continue as a Member or associated person. Because of the discretionary language and additional restrictions, the Exchange may consider additional circumstances when determining whether a person may become or continue as a Member or associated person on the Exchange.

The Exchange believes that Proposed Rule 2.5(c) regarding any person or Member's ability to appeal a denied or conditioned request to become or continue as a Member or to associate with a Member is reasonable because it provides a fair procedure for the Members and persons associated with Members pursuant to Rule 7.6 (Summary Suspension of Exchange Services).

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

The Exchange also believes the proposed rule change regarding the waiver of the provisions of Rule 2.5 will better enable the Exchange to focus Exchange resources on other matters while another SRO is determining whether to permit a Member or associated person to become or continue being a Member or associated person on the exchange.

Lastly, the Exchange believes it is reasonable to remove language in Rule 2.5(a)(3) because the Exchange is eliminating any potential for confusion by simplifying the Exchange Rules, ensuring that Members, regulators, and the public can more easily navigate the Exchange's Rulebook.

(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. As noted above, although the proposal will provide the Exchange with additional discretionary authority with respect to potential Members of the Exchange, the Exchange is bound by the Act to act consistent with the protection of investors and in the public interest and is prohibited from unfairly discriminating against Members or prospective Members.<sup>19</sup> Further, the proposal is not a competitive proposal designed to either attract or prevent prospective Members from joining the Exchange, but rather, is primarily focused on modifying the Exchange's rules to ensure clarity and consistency with other SROs.

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from Members or other interested parties.

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) by its terms, 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>20</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>21</sup> the Exchange has designated this rule filing as non-controversial. 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, 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 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.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4.



#### IV. Solicitation of Comments

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](mailto:rule-comments@sec.gov). Please include File No. SR-BatsEDGX-2016-59 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-BatsEDGX-2016-59. 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-BatsEDGX-2016-59 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>22</sup>

Brent J. Fields  
Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).