

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79942; File No. SR-BatsEDGX-2017-11)

February 2, 2017

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Functionality Offered by the Exchange's Options Platform to Adopt Qualified Contingent Cross Orders

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 February 1, 2017, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 related to functionality offered by the Exchange's options platform ("EDGX Options") to adopt Qualified Contingent Cross Orders, as described below.

The text of the proposed rule change is available at the Exchange's website at [www.bats.com](http://www.bats.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

The Exchange is filing this proposal related to functionality offered by EDGX Options to adopt Qualified Contingent Cross Orders ("QCC Orders"), as described below.

Background

The purpose of this filing is to adopt rules related to QCC Orders. The proposed rule change is based on the rules of other options exchanges, including an International Securities Exchange ("ISE") proposal that was previously approved by the Securities and Exchange Commission ("Commission").<sup>5</sup>

The Exchange is currently a party to the Options Order Protection and Locked/Crossed Market Plan ("Linkage Plan"), and has implemented Exchange rules in conjunction with that plan, which are set forth in Chapter XXVII of the Exchange's Rules (the "Linkage Rules"). Similar to Regulation NMS under the Act, the Linkage Plan requires, among other things, that the Exchange establish, maintain and enforce written policies and procedures that are reasonably

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<sup>5</sup> See Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR-ISE-2010-73) ("ISE Approval").

designed to prevent “Trade-Throughs.”<sup>6</sup> A Trade-Through is a transaction in an options series at a price that is inferior to the best price available in the market.<sup>7</sup> The Linkage Plan replaced the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Old Linkage Plan”). The Old Linkage Plan provided a limited Trade-Through exemption for “Block Trades,” defined to be trades of 500 or more contracts with a premium value of at least \$150,000.<sup>8</sup> However, as with Regulation NMS, the Linkage Plan does not provide a Block Trade exemption. Since its original adoption by the ISE in 2011, QCC has been offered by multiple options exchanges as a limited substitute for the Block Trade exemption.<sup>9</sup>

#### Proposal Regarding Qualified Contingent Cross Orders

The purpose of the proposed change is to provide the Exchange Users<sup>10</sup> with the ability to submit to the Exchange Qualified Contingent Cross Orders, an order type offered by multiple other options exchanges.<sup>11</sup> The proposed operation of Qualified Contingent Cross Orders on the Exchange is substantially similar in all material respects to the operation of such orders on such other exchanges.

The Exchange proposes to adopt new paragraph (d)(11) to Rule 21.1 to govern the operation of Qualified Contingent Cross Orders. As proposed, a Qualified Contingent Cross Order would be an originating order to buy or sell at least 1,000 standard option contracts that is

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<sup>6</sup> See Section 5(a) of the Linkage Plan

<sup>7</sup> See Section 2(21) of the Linkage Plan

<sup>8</sup> See Old Linkage Plan Sections 2(3) and 8(c)(i)(C).

<sup>9</sup> See ISE Rule 715(j), Supplementary Material .01 to ISE Rule 715 and ISE Rule 721(b); see also CBOE Rule 6.53(u); NASDAQ PHLX Rule 1080(o); NYSE Arca Rule 6.62(bb), Commentary .02 to NYSE Arca Rule 6.62 and NYSE Arca Rule 6.90.

<sup>10</sup> The term “User” means any Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access). See Exchange Rule 16.1(a)(63).

<sup>11</sup> See supra, note 9.

identified as being part of a qualified contingent trade (as that term is proposed to be defined in paragraph (d)(11)(A) to Rule 21.1), coupled with a contra-side order or orders totaling an equal number of contracts. As proposed, a “qualified contingent trade” is a transaction consisting of two or more component orders, executed as agent or principal, where: (i) at least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Act; (ii) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component is contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (v) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (vi) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

As proposed, Qualified Contingent Cross Orders would be allowed to execute automatically on entry without exposure provided the execution: (i) is not at the same price as a Priority Customer Order<sup>12</sup> resting in the EDGX Options Book;<sup>13</sup> and (ii) is at or between the national best bid or offer (“NBBO”). As such, the Exchange also proposes to specify in proposed Rule 21.1(d)(11)(B) that Rule 22.12, related to exposure of orders on EDGX Options, does not apply to Qualified Contingent Cross Orders. The proposed Rule would also specify that

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<sup>12</sup> See Exchange Rule 16.1(a)(45) (defining “Priority Customer” and “Priority Customer Order”).

<sup>13</sup> See Exchange Rule 16.1(a)(9) (defining “EDGX Options Book”).

Qualified Contingent Cross Orders will be cancelled if they cannot be executed. Also, pursuant to the proposed rule, Qualified Contingent Cross Orders may only be entered in the standard increments applicable to the options class under Rule 21.5.

The Exchange will track and monitor QCC Orders to determine which is the originating side of the order and which is the contra-side(s) of the order to ensure that Members are complying with the minimum 1,000 contract size limitation on the originating side of the QCC Order. The Exchange will check to see if Members are aggregating multiple orders to meet the 1,000 contract minimum on the originating side of the trade in violation of the requirements of the rule. The rule requires that the originating side of the trade consist of one party who is submitting a QCC Order for at least 1,000 contracts. The Exchange represents that it will enforce compliance with this portion of the rule by checking to see if a Member breaks up the originating side of the order in a post trade allocation to different clearing firms, allocating less than 1,000 contracts to a party or multiple parties. For example, a Member enters a QCC Order into the system for 1,500 contracts and receives an execution. Subsequent to the execution, the Member allocates the originating side of the order to two different clearing firms on a post trade allocation basis, thereby allocating 500 contracts to one clearing firm and 1,000 contracts to another clearing firm. This type of transaction would not meet the requirements of a QCC Order under the current and proposed rule.

With regard to order entry, a Member will have to mark the originating side as the first order in the system and the contra-side(s) as the second. The Exchange will monitor order entries to ensure that Members are properly entering QCC Orders into the system.

## 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>14</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act<sup>15</sup> because it is designed to offer market participants greater flexibility by allowing such market participant to submit QCC Orders to the EDGX Options Book in the same way they are permitted to send QCC Orders to other options exchanges, thereby promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in facilitating transactions in securities, removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.

The proposed rules are consistent with the protection of investors in that they are designed to prevent Trade-Throughs. In addition, the proposed rule change would promote a free and open market by permitting the Exchange to compete with other options exchanges for these types of orders. In this regard, competition would result in benefits to the investing public, whereas a lack of competition would serve to limit the choices that participants have for execution of their options business. As noted above, the proposed operation of Qualified Contingent Cross Orders on the Exchange is substantially similar in all material respects to the operation of such orders on such other exchanges.<sup>16</sup> As such, permitting the Exchange to operate on an even playing field relative to other exchanges removes impediments to and to perfects the mechanism for a free and open market and a national market system.

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<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> See supra, note 9.

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

The Exchange does not believe that the proposed rule change to adopt QCC Orders will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed functionality is open to all market participants. Further, the proposed rule will allow the Exchange to compete with other options exchanges that currently offer QCC Orders, thus alleviating the burden on competition that would arise if such exchanges were permitted to continue offering such functionality and the Exchange was not. For these reasons, the Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition.

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. 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>17</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>18</sup> the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4.

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.

#### 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-BatsEDGX-2017-11 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-BatsEDGX-2017-11. 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-BatsEDGX-2017-11, 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).