

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80841; File No. SR-BatsEDGX-2017-25)

June 1, 2017

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add a New Optional Order Instruction Known as Non-Displayed Swap

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 26, 2017, Bats EDGX Exchange, Inc. (“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 Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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: (i) amend paragraph (n) of Exchange Rule 11.6, Routing/Posting Instructions to add a new optional order instruction to be known as Non-Displayed Swap; and (ii) make a related change to description of Limit Orders and MidPoint Peg Orders under Exchange Rule 11.8.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at the Exchange's website at www.bats.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 proposes to: (i) amend paragraph (n) of Exchange Rule 11.6, Routing/Posting Instructions to add a new optional order instruction to be known as Non-Displayed Swap; and (ii) make a related change to description of Limit Orders and MidPoint Peg Orders under Exchange Rule 11.8. The proposed amendments are substantially similar to the rules of the Nasdaq Stock Market LLC ("Nasdaq") and NYSE Arca, Inc. ("Arca").⁵

⁵ See Nasdaq Rule 4703(m) (defining the Trade Now order modifier). See also Securities Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (Notice of Filing and Immediate Effectiveness to add the Trade Now instruction to certain order types). See Arca Rule 7.31(d)(2)(B) (describing the Non-Display Remove Modifier). See also Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015).

The proposed Non-Displayed Swap (“NDS”) instruction would provide orders with a Non-Displayed⁶ instruction resting on the EDGX Book⁷ with a greater ability to receive an execution when that resting order is locked by an incoming order (e.g., the price of the resting non-displayed order is equal to the price of the incoming order that is to be placed on the EDGX Book). The NDS instruction would be an optional order instruction which would allow Users⁸ to have their resting non-displayed orders execute against an incoming order with a Post Only instruction rather than have it be locked by the incoming order. NDS would be defined as an instruction that may be attached to an order with a Non-Displayed instruction that when such order is resting on the EDGX Book and would be locked by an incoming order with a Post Only instruction that does not remove liquidity pursuant to paragraph (4) of Exchange Rule 11.6(n),⁹ the order with a NDS instruction is converted to an executable order and will remove liquidity against such incoming order. An order with a NDS instruction would not be eligible for routing pursuant to Exchange Rule 11.11, Routing to Away Trading Centers. The proposed NDS instruction assists in the avoidance of an internally locked EDGX Book (though such lock would

⁶ See Exchange Rule 11.6(e)(2).

⁷ See Exchange Rule 1.5(d).

⁸ See Exchange Rule 1.5(ee).

⁹ Under Exchange Rule 11.6(n)(4), an order with a Post Only instruction will remove contra-side liquidity from the EDGX Book if the order is an order to buy or sell a security priced below \$1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

not be displayed by the Exchange)¹⁰ by facilitating the execution of orders that would otherwise lock each other.

The following example illustrates the operation of an order with a NDS instruction. Assume the National Best Bid and Offer is \$10.00 by \$10.04. There is a Limit Order to buy with a Non-Displayed instruction resting on the EDGX Book at \$10.03. An order to sell with a Post Only instruction priced at \$10.03 is entered. Under current behavior, the incoming sell order with a Post Only instruction would post to the EDGX Book because it would not receive sufficient price improvement.¹¹ This would result in the EDGX Book being internally locked.¹² As proposed, if the Limit Order to buy with Non-Displayed instruction also included a NDS instruction, the orders would instead execute against each other at \$10.03, with the resting buy order with the NDS instruction becoming the remover of liquidity and the incoming sell order with a Post Only instruction becoming the liquidity provider.

Assume the same facts as above, but that a Limit Order with a Non-Displayed instruction to buy at \$10.03 is also resting on the EDGX Book with time priority ahead of the Limit Order to buy with a Non-Displayed instruction mentioned above. Like above, an order to sell with a Post Only instruction priced at \$10.03 is entered. Under current behavior, the incoming sell order with a Post Only instruction would post to the EDGX Book because the value of such execution against the resting buy order when removing liquidity does not equal or exceed the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity,

¹⁰ See Exchange Rule 11.10(a)(4)(C).

¹¹ Id.

¹² In the event the incoming order with a Post Only instruction was to be displayed, it would post and display at \$10.03 and the resting buy order with a Non-Displayed instruction would not execute against it or subsequent incoming sell orders at \$10.03 for so long as the sell order was displayed on the Exchange. See Exchange Rule 11.10(a)(4)(C) and (D).

including the applicable fees charged or rebates provided. As proposed, if the Limit Order to buy with Non-Displayed instruction also included a NDS instruction, the incoming sell order would execute against the resting Limit Order with a NDS instruction at \$10.03 with the resting buy order with the NDS instruction becoming the remover of liquidity and the incoming sell order with a Post Only instruction becoming the liquidity provider. In such case, the Limit Order with a Non-Displayed instruction to buy at \$10.03 cedes time priority to the Limit Order with a Non-Displayed and NDS instruction because such order did not also include a NDS instruction¹³ and thus the User that submitted the order did not indicate the preference to be treated as the remover of liquidity in favor of an execution; instead, by not using NDS, a User indicates the preference to remain posted on the EDGX Book as a liquidity provider.¹⁴ However, if the incoming sell order was priced at \$10.02, it would receive sufficient price improvement to execute upon entry against all resting buy Limit Orders in time priority at \$10.03.¹⁵

If the order with a NDS instruction is only partially executed, the unexecuted portion of that order remains on the EDGX Book and maintains its priority, as is the case today for an order

¹³ This behavior is inherent in the operation of Nasdaq's Trade Now modifier and is identical to the interaction of ALO orders with orders that contain the Non-Display Remove Modifier on Arca. See Nasdaq Rule 4703(m) and Arca Rule 7.31(e)(2)(B)(iv)(b) (providing that unless a resting order is designated with a Non-Display Remove Modifier, an ALO Order will trade only with arriving interest).

¹⁴ Should the Limit Order to buy at \$10.03 with time priority be displayed on the EDGX Book, the incoming sell order at \$10.03 with a Post Only instruction will not execute against the non-displayed buy order with a NDS instruction because displayed orders have priority over non-displayed orders. In such a case, the incoming Limit Order would be handled as it is today in accordance with existing Exchange rules. See, e.g., Exchange Rules 11.6(l), 11.9, and 11.10(a).

¹⁵ The execution occurs here because the value of the execution against the buy order when removing liquidity exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. See supra note 9.

that is partially executed and not cancelled by the User.¹⁶ The Exchange is proposing to make the NDS instruction available to Limit Orders¹⁷ that include a Non-Displayed instruction and MidPoint Peg Orders.¹⁸ The NDS instruction would not be available to all other order types provided by the Exchange under its Rule 11.8, as the execution of these order types is governed by other Exchange rules and the NDS instruction would be inconsistent with the use of those order types.

The Exchange notes that similar functionality exists on Nasdaq and Arca. Nasdaq refers to their functionality as the “Trade Now” instruction¹⁹ and Arca refers to their functionality as the “Non-Display Remove Modifier”.²⁰ On Arca, a Limit Non-Displayed Order may be designated with a Non-Display Remove Modifier. If so designated, a Limit Non-Displayed Order to buy (sell) will trade as the remover of liquidity with an incoming Adding Liquidity Only Order (“ALO Order”) to sell (buy) that has a working price equal to the working price of the Limit Non-Displayed Order.²¹ On Nasdaq, Trade Now is an order attribute that allows a resting order that becomes locked by an incoming Displayed Order to execute against the

¹⁶ See Exchange Rule 11.9(a)(5).

¹⁷ See Exchange Rule 11.8(b).

¹⁸ See Exchange Rule 11.8(d).

¹⁹ See Nasdaq Rule 4703(m). See also Securities and Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (SR-Nasdaq-2016-156) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4703 and Rule 4703 to add a “Trade Now” Instruction to Certain Order Types).

²⁰ See Arca Rule 7.31(d)(2)(B). See also Securities and Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR-NYSEArca-2015-56) (Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto, Adopting New Equity Trading Rules Relating to Orders and Modifiers and the Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange’s New Trading Technology Platform) (including the Non-Display Remove Modifier).

²¹ See Arca Rule 7.31(d)(2)(b).

available size of the contra-side locking order as a liquidity taker, and any remaining shares of the resting order will remain posted on the Nasdaq Book with the same priority.²² Nasdaq requires the contra-side order to be display eligible, while the Exchange proposes to enable an order with a NDS instruction to remove liquidity regardless of whether the incoming order would have ultimately been eligible for display consistent with Arca's Non-Display Remove Modifier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁴ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 by offering Users optional functionality that will facilitate the execution of orders that would otherwise remain unexecuted, thereby increasing the efficient functioning of the Exchange. The NDS instruction is an optional feature that is intended to reflect the order management practices of various market participants. The proposed NDS instruction assists in the avoidance of an internally locked EDGX Book by facilitating the execution of orders that would otherwise post, or remain posted, to the EDGX Book.

²² Arca provides their Non-Display Remove Modifier to their Mid-Point Liquidity Orders ("MPL Orders") designated Day and MPL-ALO Orders and Arca Only Orders. Nasdaq's Trade Now functionality is available to Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, Post-Only Orders, Midpoint Peg Post-Only Orders, and Market Maker Peg Orders. To the extent the NDS instruction is only available to Limit Orders with a Non-Displayed instruction and MidPoint Peg Orders, the Exchange notes that the NDS instruction will apply to different order types than Arca's Non-Display Remove Modifier and Nasdaq's Trade Now functionality.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

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, as amended. On the contrary, the Exchange believes the proposed rule change promotes competition because it will enable the Exchange to offer functionality substantially similar to that offered by Nasdaq and Arca.²⁵ Therefore, the Exchange does not believe the proposed rule change will result in any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As the NDS feature will be equally available to all Users, the Exchange does not believe the proposed rule change will result in any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁶ and Rule 19b-4(f)(6) thereunder.²⁷

²⁵ See supra note 5.

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business

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 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 change 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. Please include File Number SR-BatsEDGX-2017-25 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-2017-25. 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

days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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 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-2017-25, 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.²⁸

Eduardo A. Aleman
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).