

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76714; File No. SR-EDGX-2015-64]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.6(n)(1), Routing/Posting Instructions, To Amend the Aggressive Instruction

December 21, 2015.

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 December 16, 2015, 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 the Aggressive instruction under Exchange Rule 11.6(n)(1) to route such orders where that order has been locked or crossed by other Trading Centers. The proposed rule change is based on recently filed proposed rule changes by BATS Exchange, Inc. (“BZX”) and BATS Y-Exchange, Inc. (“BYX”).<sup>5</sup>

The text of the proposed rule change is available at the Exchange’s Web site 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

In early 2014, the Exchange and its affiliate, EDGA Exchange, Inc. (“EDGA”) received approval to effect a merger (the “Merger”) of the Exchange’s parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA and EDGX, the “BGM Affiliated Exchanges”).<sup>6</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules and functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the Exchange proposes to amend the Aggressive instruction under Exchange Rule 11.6(n)(1) in order to conform with recently filed proposed rule changes by BYX and BZX<sup>7</sup> to provide a consistent rule set across each of the BGM Affiliated Exchanges.<sup>8</sup>

Users<sup>9</sup> may submit Limit Orders<sup>10</sup> to the Exchange that are processed pursuant to Exchange Rules 11.10(a) and 11.11, as set forth below. Rule 11.10(a) describes the process by which an incoming order would execute against the EDGX Book.<sup>11</sup> To the extent an order has not been executed in its entirety against the EDGX Book, Rule 11.11 then describes the process of routing marketable Limit Orders to one or more Trading Centers, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the

unfilled balance of the order may be posted to the EDGX Book.

The Aggressive instruction subjects an order to the routing process after being posted to the EDGX Book only if the order is subsequently crossed by another Trading Center (rather than if the order is locked or crossed). Further, a routable Limit Order with a Non-Displayed<sup>12</sup> instruction posted to the EDGX Book that is crossed by another accessible Trading Center will be automatically routed to the crossing Trading Center. The Exchange proposes to modify the Aggressive instruction to also provide that, where the order is locked by another accessible Trading Center, it would be automatically routed to the locking Trading Center. The proposed amendment would also apply to orders with a Non-Displayed instruction and Aggressive instruction.<sup>13</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. Specifically, the proposed changes are designed to provide Users with additional control over their orders in the context of a national market system where quotations may lock or cross orders posted to the EDGX Book and to facilitate executions on the Exchange consistent with User instructions. Thus, the proposals are directly targeted at removing impediments to and perfecting the mechanism of a free and

<sup>12</sup> See Exchange Rule 11.6(e)(2).

<sup>13</sup> The Exchange also provides the Super Aggressive instruction which directs the System to route the order if an away Trading Center locks or crosses the limit price of the order resting on the EDGX Book. See Exchange Rule 11.6(n)(2). When any order with a Super Aggressive instruction is locked by an incoming order with a Post Only instruction that does not remove liquidity pursuant to Rule 11.6(n)(4) below, the order with a Super Aggressive instruction is converted to an executable order and will remove liquidity against such incoming order (“liquidity swap functionality”). *Id.* Once amended, the only difference between the Aggressive and Super Aggressive instructions would be that the liquidity swap functionality described above would be available to an order subject to the Super Aggressive instruction and not available to an order subject to the Aggressive instruction.

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

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

<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).

<sup>5</sup> See Securities Exchange Act Release Nos. 76623 (December 11, 2015) (SR-BATS-2015-112), and 76625 (December 11, 2015) (SR-BYX-2015-49) (amending the Aggressive Re-Route instruction under BYX and BZX Rules 11.13(b)(4)(A) to route such orders where that order has been locked or crossed by other Trading Centers).

<sup>6</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43; SR-EDGA-2013-34).

<sup>7</sup> See *supra* note 5.

<sup>8</sup> The Exchange notes that EDGA intends to file an identical proposal with the Commission.

<sup>9</sup> The term “User” means “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” See Exchange Rule 1.5(ee).

<sup>10</sup> See Exchange Rule 11.8(b).

<sup>11</sup> See Exchange Rule 1.5(d).

open market and national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>16</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. Lastly, the Exchange notes that the proposed amendments to the Aggressive instruction previously existed on BZX and BYX as the RECYCLE routing option.<sup>17</sup>

Consistent with Section 6(b)(5) of the Act,<sup>18</sup> the proposed rule change, combined with the planned filing for EDGA, would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the routing of orders that are locked or crossed by a Trading Center. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGA, BYZ and/or BZX. 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 and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

#### *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. The Exchange believes that proposed amendment to the Aggressive functionality encourages competition by increasing the likelihood of executions of orders that have been posted to the Exchange. The increased likelihood of

an execution where the order is locked by a quotation on a Trading Center should attract additional order flow to the Exchange.

#### *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**

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>21</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>22</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 stated that waiver of the operative delay will allow the Exchange to immediately provide Users with additional control over their orders in the context of a national market system where quotations may lock or cross orders posted to the EDGX Book and to facilitate executions on the Exchange consistent with User instructions.<sup>23</sup> The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and

designates the proposal operative upon filing.<sup>24</sup>

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2015-64 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-EDGX-2015-64. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official

<sup>16</sup> 15 U.S.C. 78k-1(a)(1).

<sup>17</sup> See Securities Exchange Act Release Nos. 59967 (May 21, 2009), 74 FR 25793 (May 29, 2009) (SR-BATS-2009-015) (proposing to allow the designation of an order as eligible for re-routing after being posted to the BATS Book if another Trading Center has locked or crossed the posted order); 62404 (June 30, 2010), 75 FR 39303 (July 8, 2010) (SR-BATS-2010-017) (naming the designation of an order as eligible for re-routing after being posted to the BATS Book if another Trading Center has locked or crossed the posted order as the RECYCLE routing option); and 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR-BATS-2010-002)[sic] (naming the designation of an order as eligible for re-routing after being posted to the BATS Book if another Trading Center has locked or crossed the posted order as the RECYCLE routing option).

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

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 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 days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>23</sup> The Exchange further stated that it will provide Members with reasonable advance notice of the proposed rule change's implementation date.

<sup>24</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).

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-EDGX-2015-64, and should be submitted on or before January 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-32523 Filed 12-24-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76709; File No. SR-BATS-2015-115]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

December 21, 2015.

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 December 17, 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change 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 the Market Data section of its fee schedule to: (i) Adopt definitions for the terms “Non-Display Usage” and “Trading Platforms”; and (ii) amend the fees for TCP Depth and Multicast Depth data products,<sup>5</sup> also known as BZX Depth, to increase the Internal Distributor fee and adopt a new fee for Non-Display Usage.

The text of the proposed rule change is available at the Exchange’s Web site 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 proposes to amend the Market Data section of its fee schedule to: (i) adopt definitions for the terms “Non-Display Usage” and “Trading Platforms”; and (ii) amend the fees for BZX Depth to increase the Internal Distributor fee and adopt a new fee for Non-Display Usage.

###### Definitions

The Exchange proposes to adopt definitions for the terms “Non-Display Usage” and “Trading Platforms”. The proposed definitions are designed to provide greater transparency with regard to how the Exchange assesses fees for market data. Non-Display Usage would be defined as “any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.”<sup>6</sup> The term Trading Platform

would be defined as “any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).”<sup>7</sup>

###### BZX Depth Fees

BZX Depth is an uncompressed market data feed that provides depth-of-book quotations and execution information based on equity orders entered into the System.<sup>8</sup>

*Internal Distributor Fee.* Currently, the Exchange charges fees for both internal and external distribution of BZX Depth. The cost of BZX Depth for an Internal Distributor<sup>9</sup> is currently \$1,000 per month. The Exchange also separately charges an External Distributor<sup>10</sup> of BZX Depth a flat fee of \$5,000 per month. The Exchange does not charge Internal and External Distributors separate display User<sup>11</sup> fees. The Exchange now proposes to increase the fee for Internal Distributors from \$1,000 per month to \$1,500 per month. The Exchange does not propose to amend its fees for External Distributors.

*Non-Display Usage Fee.* The Exchange also proposes to adopt a new fee for Non-Display Usage by Trading Platforms, which is similar to fees currently being charged by Nasdaq and the New York Stock Exchange, Inc. (“NYSE”).<sup>12</sup> As proposed, subscribers to

(“Nasdaq”) Rule 7023(a)(2)(B), which defines Non-Display Usage as “any method of accessing Depth-of-Book data that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.

<sup>7</sup> The proposed definition of Trading Platform is identical to the definition of Trading Platform under Nasdaq Rule 7023(a)(7).

<sup>8</sup> See Exchange Rule 11.22(a) and (c).

<sup>9</sup> An “Internal Distributor” is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.” See the Exchange Fee Schedule available at [http://batstrading.com/support/fee\\_schedule/bzx/](http://batstrading.com/support/fee_schedule/bzx/). A “Distributor” is defined as “any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.” *Id.*

<sup>10</sup> An “External Distributor” is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.” *Id.*

<sup>11</sup> A “User” is defined as “a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.” *Id.*

<sup>12</sup> See Nasdaq Rule 7023(d) (setting forth a Trading Platform Fee of \$5,000 per trading platform up to a maximum of three trading platforms for depth-of-book data). See also NYSE Market Data

Continued

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<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)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> See Exchange Rule 11.22(a) and (c).

<sup>6</sup> The proposed definition of Non-Display Usage is substantially similar to Nasdaq Stock Market LLC