

notice and an opportunity to be heard before a neutral tribunal. Moreover, the Exchange anticipates using the authority provided by these rules sparingly.

#### *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. The changes are being proposed to provide an important regulatory tool to the Exchange and FINRA, acting on its behalf, which will protect investors when violative conduct is being taken by a member or person associated with a member, and time is of the essence to prevent harm, or further harm, to investors.

The proposed change does not impose a burden on competition among participants or other venues because it will only be used in circumstances where investor harm is imminent or is occurring. Thus, to the extent a burden on competition results from use of the authority provided by the proposed rules, such burden is necessary to protect investors, which is consistent with 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 written comments were either solicited or received.

### **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, 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)(iii) of the Act<sup>43</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>44</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange has stated that it is requesting this waiver so that the Exchange could apply, at the earliest time possible, the authority to issue temporary cease and

desist orders and explicit authority to impose permanent cease and desist orders as a remedy in disciplinary cases. The Exchange explained that although it does not anticipate that it will be necessary to use this authority, when its cease and desist authority is needed, the Exchange must be able to move swiftly to prevent or stop investor harm. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because this waiver will enable the Exchange to utilize the temporary or permanent cease and desist authority described herein without delay in the unlikely event that circumstances arise that warrant its use. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.<sup>45</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2016-055 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BX-2016-055. 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 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-BX-2016-055, and should be submitted on or December 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>46</sup>

**Brent J. Fields,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79264; File No. SR-BatsEDGX-2016-60]

### **Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change in Connection With the Proposed Corporate Transaction Involving Bats Global Markets, Inc. and CBOE Holdings, Inc.**

November 8, 2016.

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 November 2, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule

<sup>45</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>46</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. 78f(a).

<sup>43</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>44</sup> 17 CFR 240.19b-4(f)(6).

change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 proposed rule change (the "Proposed Rule Change") in connection with the proposed corporate transaction (the "Transaction"), as described in more detail below, involving its ultimate parent company, Bats Global Markets, Inc. ("BGM"), CBOE Holdings, Inc. ("CBOE Holdings"), and two wholly owned subsidiaries of CBOE Holdings, CBOE Corporation and CBOE V, LLC ("CBOE V"). CBOE Holdings is the parent company of Chicago Board Options Exchange, Incorporated ("CBOE") and C2 Options Exchange, Incorporated ("C2"), each a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act,<sup>3</sup> and CBOE Futures Exchange, LLC ("CBOE Futures," and together with CBOE and C2, the "CBOE Exchanges"), a national securities exchange that lists or trades security-futures products notice-registered with the Commission pursuant to Section 6(g) of the Act.<sup>4</sup>

Upon completion of the mergers described below that effectuate the Transaction (the "Closing"), the business of BGM will be carried on by CBOE V. CBOE V, rather than BGM, will be the direct parent company of Direct Edge LLC ("Direct Edge"), which is the direct parent company of the Exchange. As a result, CBOE Holdings will become the ultimate parent company of Direct Edge and of the Exchange.

To effectuate the Transaction, the Exchange seeks to obtain the Commission's approval of: (i) The resolutions of BGM's board of directors (the "BGM Board") waiving certain provisions of the Amended and Restated Certificate of Incorporation of BGM (the "BGM Charter") and making certain related determinations regarding CBOE Holdings and the impact of the Transaction on the Exchange (the "Resolutions"); (ii) the CBOE Holdings Second Amended and Restated Certificate of Incorporation (the "CBOE Holdings Charter") and the CBOE Holdings Third Amended and Restated Bylaws (the "CBOE Holdings Bylaws"); (iii) the Certificate of Formation of CBOE V (the "CBOE V Certificate") and the Limited Liability Company

Operating Agreement of CBOE V (the "CBOE V Operating Agreement"); (iv) the proposed amendments to the Amended and Restated Limited Liability Company Operating Agreement of Direct Edge (the "Direct Edge Operating Agreement"); (v) the proposed amendments to the Fifth Amended and Restated Bylaws of the Exchange (the "Exchange Bylaws"); and (vi) the proposed amendments to EDGX Rules 2.3, 2.10 and 2.12 (the "Exchange Rules").

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**

The Exchange submits this Proposed Rule Change to seek the Commission's approval of the organizational and governance documents of the Exchange and its current and proposed future parent companies, and related actions that are necessary in connection with the Closing of the Transaction, as described below.

Other than as described herein and set forth in Exhibits 5A through 5H, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and members) in the manner currently conducted, and will not make any changes to its regulated activities in connection with the Transaction. Except as set forth in this Proposed Rule Change, the Exchange is not proposing any amendments to its trading and regulatory rules at this time. If the Exchange determines to make any such changes, it will seek the approval of the Commission to the extent required by the Act, and the Commission's rules

thereunder, and the Rules of the Exchange.

##### **1. Current Corporate Structures**

The Exchange, Bats BZX Exchange, Inc. ("BZX"), Bats BYX Exchange, Inc. ("BYX") and Bats EDGA Exchange, Inc. ("EDGA," and together with the Exchange, BZX and BYX, the "Bats Exchanges") are each Delaware corporations that are national securities exchanges registered with the Commission pursuant to Section 6(a) of the Act.<sup>5</sup>

The Exchange and EDGA are each direct, wholly owned subsidiaries of Direct Edge, a Delaware limited liability company that is a direct, wholly owned subsidiary of BGM. BZX and BYX are direct, wholly owned subsidiaries of Bats Global Markets Holdings, Inc. ("BGM Holdings"), a Delaware corporation that is a direct, wholly owned subsidiary of BGM. In addition to certain other subsidiaries not registered with the Commission in any capacity, BGM Holdings also owns 100 percent of the equity interest in Bats Trading, Inc. ("Bats Trading"), a Delaware corporation that is a broker-dealer registered with the Commission that provides routing services outbound from, and in certain instances inbound to, each Bats Exchange. BGM, a Delaware corporation, is a publicly traded company listed on BZX.

CBOE Holdings, a Delaware corporation, is a publicly traded company listed on The NASDAQ Stock Market. CBOE Holdings owns 100 percent of the equity interest in the CBOE Exchanges.

In contemplation of the Transaction, CBOE Holdings formed two additional entities, CBOE Corporation, a Delaware corporation, and CBOE V, a Delaware limited liability company, each of which are direct, wholly owned subsidiaries of CBOE Holdings. Each of CBOE Corporation and CBOE V currently have no material assets or conduct any operations.

##### **2. The Transaction**

On September 25, 2016, BGM, CBOE Holdings, CBOE Corporation and CBOE V entered into an Agreement and Plan of Merger (the "Merger Agreement"). Pursuant to and subject to the terms of the Merger Agreement, at the Closing, among other things:

(i) CBOE Corporation will be merged with and into BGM, whereupon the separate existence of CBOE Corporation will cease and BGM will be the surviving company (the "Merger");

<sup>4</sup> 15 U.S.C. 78f(g).

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

(ii) by virtue of the Merger and without any action required on the part of BGM, CBOE Corporation or any holder of BGM or CBOE Corporation stock, each share of BGM common stock (whether voting or non-voting) issued and outstanding (with the exception of shares owned by CBOE Holdings, BGM or any of their respective subsidiaries and certain shares held by persons that are entitled to and properly demand appraisal rights) will be converted into the right to receive a particular number of shares of CBOE Holdings and/or cash, at the election of the holder of such share of BGM common stock (the “Merger Consideration”), and each share of CBOE Corporation issued and outstanding will be converted into one share of BGM, such that BGM will become a wholly owned subsidiary of CBOE Holdings; and

(iii) immediately following the Merger, BGM will be merged with and into CBOE V, whereupon the separate existence of BGM will cease and CBOE V will be the surviving company (the “Subsequent Merger”).

Upon the Closing, the Direct Edge Operating Agreement, the Exchange Bylaws and the Exchange Rules will be amended to take into account the post-Closing corporate structure, described below.

### 3. Post-Closing Corporate Structure

As a result of the Transaction, BGM will cease to exist and the business of BGM will be carried on by CBOE V, which is a wholly owned subsidiary of CBOE Holdings.<sup>6</sup> CBOE V will own 100 percent of the equity interest in Direct Edge and BGM Holdings. Direct Edge will continue to own 100 percent of the equity interest in the Exchange and EDGA. BGM Holdings will continue to own 100 percent of the equity interest in BZX, BYX, Bats Trading, and certain other subsidiaries not registered with the Commission in any capacity.<sup>7</sup>

<sup>6</sup>In connection with the Transaction, CBOE Holdings agreed in the Merger Agreement to take all requisite actions so, as of the Closing, the CBOE Holdings Board will include three individuals designated by BGM who (1) are serving as BGM directors immediately prior to the Closing and (2) comply with the policies (including clarifications of the policies provided to BGM) of the Nominating and Governance Committee of the CBOE Holdings Board as in effect on the date of the Merger Agreement and previously provided to BGM (each of whom will be appointed to the CBOE Holdings Board as of the Closing). The CBOE Holdings Board currently consists of 14 directors. The Exchange expects three current CBOE Holdings directors to resign effective prior to the Closing and the remaining CBOE Holdings directors to fill those vacancies with the three BGM directors designated by BGM.

<sup>7</sup>As described above, the Transaction will result in a change of ownership of Bats Trading, which is a member of the Financial Industry Regulatory

### 4. Ownership and Voting Limitations of BGM; Resolutions

The BGM Charter provides that (i) no Person,<sup>8</sup> either alone or together with its Related Persons,<sup>9</sup> may own, directly or indirectly, of record or beneficially, shares constituting more than 40 percent of any class of its capital stock, and no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than 20 percent of any class of its capital stock (collectively, the “BGM Ownership Limitation”); and (ii) subject to certain exceptions, no Person, either alone or together with its Related Persons, at any time, may, directly, indirectly or pursuant to any of various arrangements, vote or cause the voting of shares or give any consent or proxy with respect to shares representing more than 20 percent of the voting power of its then issued and

Authority, Inc. (“FINRA”). The Exchange understands that, pursuant to NASD Rule 1017, Bats Trading is seeking approval for this change of ownership from FINRA.

<sup>8</sup>The BGM Charter generally defines a “Person” as a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government. *See* BGM Charter, Art. FIFTH, para. (a)(i).

<sup>9</sup>The BGM Charter generally defines a “Related Person” as, with respect to any Person, (i) any “affiliate” of such Person (as defined in Rule 12b-2 under the Act); (ii) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of BGM; (iii) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 under the Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (iv) in the case of any Person that is a registered broker or dealer that has been admitted to membership in any of the Bats Exchanges (for purposes of this definition of “Related Person,” each such national securities exchange shall be referred to generally as an “Exchange” and any member of such Exchange, an “Exchange Member”), any Person that is associated with the Exchange Member (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Act); (v) in the case of a Person that is a natural person and Exchange Member, any broker or dealer that is also an Exchange Member with which such Person is associated; (vi) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of BGM or any of its parents or subsidiaries; (vii) in the case of a Person that is an executive officer (as defined under Rule 3b-7 under the Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (viii) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable. *See* BGM Charter, Art. FIFTH, para. (a)(ii).

outstanding capital stock (the “BGM Voting Limitation”).<sup>10</sup> Purported transfers that would result in a violation of the BGM Ownership Limitation are not recognized by BGM to the extent of any ownership in excess of the BGM Ownership Limitation, and purported voting or voting arrangements in violation of the BGM Voting Limitation are not honored by BGM to the extent of any voting in excess of the limitation.<sup>11</sup>

However, the BGM Charter provides that each of the BGM Ownership Limitation and the BGM Voting Limitation may be waived (except with respect to Exchange Members and their Related Persons) pursuant to a resolution duly adopted by the BGM Board if, in connection with taking such action, the BGM Board states in such resolution that it is the determination of the BGM Board that the waiver:

- Will not impair the ability of each Bats Exchange to carry out its functions and responsibilities as an “exchange” under the Act and the rules and regulations promulgated thereunder;
- is otherwise in the best interests of BGM, its stockholders, and each Bats Exchange;
- will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; and
- shall not be effective until it is filed with and approved by the Commission.<sup>12</sup>

In granting such a waiver, the BGM Board has the discretion to impose on the Person and its Related Persons, such conditions and restrictions that it deems necessary, appropriate or desirable in furtherance of the objectives of the Act and the rules and regulations promulgated thereunder, and the governance of each Bats Exchange.<sup>13</sup>

In addition, notwithstanding the above, the BGM Charter provides<sup>14</sup> that in any case where a Person, either alone or with its Related Persons, would own or vote more than the BGM Ownership Limitation or BGM Voting Limitation, respectively, upon consummation of any proposed sale, assignment or transfer of BGM’s capital stock, such a transaction will not become effective until the BGM Board determines, by resolution, that such Person and its Related Persons are not subject to any “statutory disqualification,” as defined in Section 3(a)(39) of the Act.<sup>15</sup>

<sup>10</sup> *See* BGM Charter, Art. FIFTH, para. (b).

<sup>11</sup> *See* BGM Charter, Art. FIFTH, para. (d).

<sup>12</sup> *See* BGM Charter, Art. FIFTH, para. (b)(ii)(B).

<sup>13</sup> *Id.*

<sup>14</sup> *See* BGM Charter, Art. FIFTH, para. (b)(iii).

<sup>15</sup> 15 U.S.C. 78c(a)(39).

As described above, as a result of the Merger (and prior to its separate existence ceasing as a result of the Subsequent Merger), BGM will become a wholly owned subsidiary of CBOE Holdings, such that CBOE Holdings will possess ownership and voting rights in BGM in excess of the Ownership Limitation and the Voting Limitation. In addition, as a result of the Subsequent Merger, BGM will merge with and into CBOE V, terminating the BGM Charter and becoming an entity whose ownership and voting is held entirely by CBOE Holdings, in excess of the BGM Ownership Limitation and the BGM Voting Limitation that would otherwise apply.

The BGM Board therefore determined that in order to effect the Transaction, a waiver of the BGM Ownership Limitation and the BGM Voting Limitation with respect to CBOE Holdings would be required. To do so, the BGM Board adopted the Resolutions, attached as Exhibit 5A, making certain determinations with respect to CBOE Holdings and the Transaction that are necessary to waive the BGM Ownership Limitation and BGM Voting Limitation. Specifically, the BGM Board determined that:

- The acquisition of the proposed ownership by CBOE Holdings in BGM will not impair the ability of each Bats Exchange to carry out its functions and responsibilities as an “exchange” under the Act and the rules and regulations promulgated thereunder, is otherwise in the best interests of BGM, its stockholders and the Bats Exchanges, and will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder;

- the acquisition or exercise of the proposed voting rights by CBOE Holdings in BGM will not impair the ability of each Bats Exchange to carry out its functions and responsibilities as an “exchange” under the Act and the rules and regulations promulgated thereunder, is otherwise in the best interests of BGM, its stockholders and the Bats Exchanges, and will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder;

- neither CBOE Holdings nor any of its Related Persons is subject to “statutory disqualification” within the meaning of Section 3(a)(39) of the Act;<sup>16</sup> and

- neither CBOE Holdings nor any of its Related Persons is an Exchange Member.<sup>17</sup>

The Exchange has reviewed such Resolutions and requests that the Commission approve such Resolutions. The Exchange believes that the Commission should approve the Resolutions, as the Transaction will not impair the ability of any Bats Exchange to carry out its functions and responsibilities as an “exchange” under the Act and the rules and regulations promulgated thereunder, or the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder. The Bats Exchanges will continue to operate and regulate their markets and members as they have done prior to the Transaction. Thus, each Bats Exchange will continue to enforce the Act, the Commission’s rules thereunder, and each Exchange’s own rules, in the manner it does today. Further, the Commission will continue to have plenary regulatory authority over the Bats Exchanges, as is currently the case with these entities.

The Exchange also notes that the Resolutions reflect the determination by the BGM Board that the Transaction and CBOE Holdings’ resulting ownership and voting rights in BGM following the Merger, and CBOE V’s ownership and voting rights following the Subsequent Merger, are otherwise in the best interests of BGM, its stockholders and the Bats Exchanges. The Bats Exchanges will be ultimately held by an entity, CBOE Holdings, that already owns other national securities exchanges and is subject to governance documents that similarly restrict concentration of ownership and voting rights.

As described in more detail below, the Exchange is also requesting approval of the adoption of the CBOE Holdings Charter and the CBOE Holdings Bylaws.

<sup>17</sup> In addition, the Resolutions contain a determination that the execution and delivery of the Merger Agreement by CBOE Holdings constituted notice of CBOE Holdings’ intention to acquire ownership and voting rights in excess of the BGM Ownership Limitation and BGM Voting Limitation, respectively, in writing and not less than 45 days before the Closing. See BGM Charter, Art. FIFTH, para. (b)(iv). The Exchange notes that Art. FIFTH, para. (c)(i) of the BGM Charter further requires that any Person that, either alone or together with its Related Persons, owns, directly or indirectly (whether by acquisition or by a change in the number of shares outstanding), of record or beneficially, five percent or more of the then outstanding shares of capital stock of BGM must immediately upon acquiring knowledge of its ownership of five percent or more give written notice of such ownership to the BGM Board. The Merger Agreement provides that the Merger Agreement constitutes such notice with respect to certain voting agreements entered into concurrently with the Merger Agreement. See Merger Agreement, Section 5.21.

The CBOE Holdings Charter includes a number of provisions relating to the Commission’s regulatory oversight that have a similar effect as those in the BGM Charter, including the BGM Ownership Limitation and the BGM Voting Limitation. Therefore, notwithstanding the Resolutions and the Transaction, provisions similar (and, in some cases, more stringent) to the BGM Ownership Limitation and the BGM Voting Limitation will remain in place with respect to potential future transactions involving the ultimate parent company of the Bats Exchanges. This means that the Exchange ownership structure will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect parent companies, and its directors, officers, employees and agents to the extent they are involved in the activities of the Exchange, and protect the independence of the Exchange’s self-regulatory activities.

The Exchange therefore requests that the Commission approve the Resolutions, attached as Exhibit 5A.

##### 5. CBOE Holdings Charter and CBOE Holdings Bylaws

CBOE Holdings currently holds a direct ownership interest in the CBOE Exchanges. The Commission has previously approved the CBOE Holdings Charter and the CBOE Holdings Bylaws (collectively, the “CBOE Holdings Organizational Documents”), attached as Exhibits 5B and 5C, respectively.<sup>18</sup>

In connection with the Transaction, upon the Closing, CBOE Holdings will become the indirect owner (through CBOE V and Direct Edge) of the Exchange and EDGA and the indirect owner (through CBOE V and BGM Holdings) of BZX, BYX and Bats Trading (and certain other subsidiaries not registered with the Commission in any capacity).

The CBOE Holdings Organizational Documents include various provisions relating to any “Regulated Securities Exchange Subsidiary,” which is defined as any national securities exchange controlled, directly or indirectly, by CBOE Holdings. Upon the Closing, the Exchange will be covered by the

<sup>18</sup> See Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-88). The CBOE Organizational Documents have been subsequently amended from time to time pursuant to proposed rule changes that were filed with the Commission for immediate effectiveness. See, e.g., Securities Exchange Act Release No. 76282 (October 27, 2015), 80 FR 67464 (November 2, 2015) (SR-CBOE-2015-092).

<sup>16</sup> *Id.*

definition of Regulated Securities Exchange Subsidiary for purposes of the CBOE Holdings Organizational Documents. As a result, no amendments to the CBOE Holdings Organizational Documents will be necessary to reflect CBOE Holdings' indirect ownership of the Exchange.

The Exchange believes that the CBOE Holdings Organizational Documents will protect and maintain the integrity of the self-regulatory functions of the Exchange and facilitate the ability of the Exchange and the Commission to carry out their regulatory and oversight obligations under the Act, as the CBOE Organizational Documents do with respect to the CBOE Exchanges.

In addition, the CBOE Organizational Documents contain provisions, including those with respect to the following, that are similar to those contained in the BGM Charter and BGM's Amended and Restated Bylaws (the "BGM Bylaws"), which the Commission has previously found to be consistent with the Act:<sup>19</sup>

- *Ownership and Voting Limitations.* Similar to the BGM Voting Limitation and the BGM Ownership Limitation contained in the BGM Charter, the CBOE Holdings Charter limits the extent of ownership and voting rights which certain persons may possess or exercise.<sup>20</sup> Like the BGM Charter, the CBOE Holdings Charter similarly prohibits any Person,<sup>21</sup> together with its Related Persons,<sup>22</sup> from exercising voting rights with respect to more than 20 percent of the then outstanding votes entitled to be cast on such matter.<sup>23</sup> However, with respect to ownership limitations, the CBOE Holdings Charter contains a more stringent threshold than contained in the BGM Charter. Under the CBOE Holdings Charter, no Person, together with its Related Persons, is permitted at any time to beneficially own directly or indirectly shares of stock of CBOE Holdings representing in the aggregate more than 20 percent of the then outstanding shares of stock of

CBOE Holdings.<sup>24</sup> In contrast, the BGM Ownership Limitation only applies a 20 percent threshold to any Exchange Member together with its Related Persons, while applying a 40 percent threshold to any other Person together with its Related Persons. As a result, the CBOE Holdings Charter should be at least as effective as the BGM Charter at preventing any stockholder from exercising undue control over the operation of the Exchange.

- *Independence and Non-Interference.* Similar to provisions contained in the BGM Bylaws, the CBOE Holdings Charter provides that for so long as CBOE Holdings controls, directly or indirectly, a Regulated Securities Exchange Subsidiary, each officer, director and employee of CBOE Holdings must give due regard to the preservation of the independence of the self-regulatory function of the Regulated Securities Exchange Subsidiaries and may not take any actions that he or she knows or reasonably should have known would interfere with the effectuation of any decisions by the board of directors of any Regulated Securities Exchange Subsidiary relating to such Regulated Securities Exchange Subsidiary's regulatory functions (including disciplinary matters) or that would adversely affect the ability of the Regulated Securities Exchange Subsidiary to carry out such Regulated Securities Exchange Subsidiary's responsibilities under the Act.<sup>25</sup>

- *Confidentiality.* Similar to provisions contained in the BGM Bylaws, the CBOE Holdings Charter provides that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of Regulated Securities Exchange Subsidiaries contained in the books and records of any Regulated Securities Exchange Subsidiary that shall come into the possession of the CBOE Holdings must be retained in confidence by CBOE Holdings and its officers, directors, employees and agents and must not be used for any commercial purposes.<sup>26</sup>

- *Books and Records.* Similar to provisions contained in the BGM Bylaws, the CBOE Holdings Charter provides that, for so long as CBOE Holdings directly or indirectly controls any Regulated Securities Exchange Subsidiary, the books, records, premises, officers, directors and

employees of CBOE Holdings shall be deemed to be the books, records, premises, officers, directors and employees of the Regulated Securities Exchange Subsidiary for purposes of and subject to oversight pursuant to the Act, but only to the extent that such books, records, premises, officers, directors and employees of the Corporation relate to the business of such Regulated Securities Exchange Subsidiary.<sup>27</sup>

- *Compliance With Securities Laws; Cooperation With the Commission.* Similar to provisions contained in the BGM Bylaws, the CBOE Holdings Charter provides that CBOE Holdings shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission, and each Regulated Securities Exchange Subsidiary pursuant to and to the extent of its regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the Regulated Securities Exchange Subsidiaries pursuant to their regulatory authority, with respect to such agents' activities related to the Regulated Securities Exchange Subsidiaries.<sup>28</sup>

- *Consent to Jurisdiction.* Similar to provisions contained in the BGM Bylaws, the CBOE Holdings Charter provides that CBOE Holdings, its directors, officers, agents and employees, irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and the Regulated Securities Exchange Subsidiaries, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the Regulated Securities Exchange Subsidiaries' activities.<sup>29</sup>

- *Amendments.* Similar to provisions contained in the BGM Charter and BGM Bylaws, the CBOE Organizational Documents provide that for so long as CBOE Holdings controls, directly or indirectly, Regulated Securities Exchange, before any amendment to or repeal of the CBOE Holdings Charter or CBOE Holdings Bylaws may be effective, such amendment or repeal must be submitted to the board of directors of each such exchange, and if the amendment or repeal is required to

<sup>19</sup> See Securities Exchange Act Release No. 77464 (March 29, 2016), 81 FR 19252 (April 4, 2016) (File Nos. SR-BATS-2016-10, SR-BYX-2016-02, SR-EDGX-2016-04, and SR-EDGA-2016-01).

<sup>20</sup> Compare CBOE Holdings Charter, Art. SIXTH with BGM Charter, Art. FIFTH.

<sup>21</sup> "Person" mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. See CBOE Holdings Charter, Art. FIFTH, para. (a)(iv).

<sup>22</sup> "Related Person" is defined in the CBOE Holdings Charter in a manner substantially the same as it is defined in the BGM Charter. See *supra* note 9; CBOE Holdings Charter, Art. FIFTH, para. (a)(vi).

<sup>23</sup> See CBOE Holdings Charter, Art. SIXTH, para. (a).

<sup>24</sup> See CBOE Holdings Charter, Art. SIXTH, para. (b).

<sup>25</sup> Compare CBOE Holdings Charter, Art. SIXTEENTH, para. (c) with BGM Bylaws, Section 12.01.

<sup>26</sup> Compare CBOE Holdings Charter, Art. FIFTEENTH with BGM Bylaws, Section 12.02.

<sup>27</sup> Compare CBOE Holdings Charter, Art. FIFTEENTH with BGM Bylaws, Section 12.03.

<sup>28</sup> Compare CBOE Holdings Charter, Art. SIXTEENTH, para. (a) with BGM Bylaws, Section 12.04.

<sup>29</sup> Compare CBOE Holdings Charter, Art. FOURTEENTH with BGM Bylaws, Section 12.05.

be filed with, or filed with and approved by the Commission, then such change shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.<sup>30</sup> As stated above, the Exchange believes that the foregoing provisions will assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

#### 6. CBOE V Certificate and CBOE V Operating Agreement

Effective as of the Closing of the Transaction, CBOE V will hold direct ownership of (i) Direct Edge, which will continue to hold direct ownership of the Exchange and EDGA and (ii) BGM Holdings, which will continue to hold direct ownership of BZX, BYX and Bats Trading (and certain other subsidiaries not registered with the Commission in any capacity). However, unlike BGM currently, CBOE V will not be the ultimate holding company under the post-Closing corporate structure, but rather will be an intermediate holding company owned by CBOE Holdings. The Exchange believes that the CBOE V Operating Agreement contains provisions relating to its indirect ownership of one or more national securities exchanges, including such exchanges' regulatory functions and Commission oversight, that are appropriate for an intermediate holding company in the ownership chain of a national securities exchange. Many of the provisions of the CBOE V Operating Agreement relating to these matters are similar to the organizational documents of Direct Edge, which currently is, and following the Subsequent Merger will be, similarly situated as an intermediate holding company of the Exchange. The Commission has previously found the Direct Edge organizational documents to be consistent with the Act.<sup>31</sup>

Although CBOE V will not carry out any regulatory functions, the Exchange notes that its activities with respect to the operation of the Bats Exchanges must be consistent with, and must not interfere with, the self-regulatory obligations of each Bats Exchange. The CBOE V Operating Agreement therefore includes certain provisions that are designed to maintain the independence of the Bats Exchanges' self-regulatory functions, enable the Bats Exchanges to operate in a manner that complies with

the federal securities laws, including the objectives of Sections 6(b)<sup>32</sup> and 19(g)<sup>33</sup> of the Act, and facilitate the ability of each Bats Exchange and the Commission to fulfill their respective regulatory and oversight obligations under the Act.

#### a. CBOE V Certificate of Formation

The CBOE V Certificate, attached as Exhibit 5D, includes the following provisions required under Delaware law: (i) The full name of CBOE V as "CBOE V, LLC", and (ii) the name and address of CBOE V's registered office in the State of Delaware and the name of CBOE V's registered agent at such address.<sup>34</sup> In addition, the CBOE V Certificate contains a provision providing that CBOE V shall indemnify members of its board of directors and certain other persons, subject to certain conditions.

As the Exchange believes is customary for limited liability companies formed in the State of Delaware, other substantive provisions governing the ownership, operation and management of CBOE V are set forth in the CBOE V Operating Agreement, discussed below.

#### b. CBOE V Operating Agreement

With respect to ownership and control of CBOE V, the CBOE V Operating Agreement, attached as Exhibit 5E, specifically provides that CBOE V's sole member is CBOE Holdings, until the CBOE V Operating Agreement is amended (subject to Commission approval, as described below).<sup>35</sup> Further, for so long as CBOE V controls, directly or indirectly, a subsidiary that is registered with the Commission as a national securities exchange (an "Exchange Subsidiary"), CBOE Holdings may not sell, assign, transfer, convey, gift, exchange or otherwise dispose of any or all of its member interest in CBOE V, except pursuant to an amendment to the CBOE V Operating Agreement that is filed with and approved by the Commission.<sup>36</sup> These restrictions are designed to ensure that any change to the ownership or control of any Exchange Subsidiary, including without limitation the Bats Exchanges, may only occur through a change in the ownership or control of CBOE Holdings. As such, any purported change of such ownership or control (unless pursuant to a Commission-approved change of ownership of CBOE

V) would need to comply with the CBOE Holdings Charter and CBOE Holdings Bylaws, including the ownership and voting limitations discussed above (or a Commission-approved waiver therefrom).

The CBOE V Operating Agreement also contains several provisions designed to protect the independence of the self-regulatory functions of the Bats Exchanges. The CBOE V Operating Agreement requires that, for so long as CBOE V, directly or indirectly, controls any Exchange Subsidiary, CBOE Holdings, as the sole member of CBOE V, and officers, employees and agents of CBOE V must give due regard to the preservation of independence of the self-regulatory functions of such Exchange Subsidiary, as well as to its obligations to investors and the general public, and not interfere with the effectuation of any decisions by the board of directors of an Exchange Subsidiary relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of such Exchange Subsidiary to carry out its responsibilities under the Act.<sup>37</sup>

The CBOE V Operating Agreement also would require that CBOE V comply with the U.S. federal securities laws and rules and regulations thereunder and cooperate with the Commission and each Exchange Subsidiary, as applicable, pursuant to and to the extent of their respective regulatory authority.<sup>38</sup> Further, CBOE V's officers, directors, employees and agents shall be deemed to agree to (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) cooperate with the Commission and each Exchange Subsidiary in respect of the Commission's oversight responsibilities regarding such Exchange Subsidiary and the self-regulatory functions and responsibilities of the Exchange Subsidiaries, and CBOE V will take reasonable steps to cause its officers, employees and agents to so cooperate.<sup>39</sup>

Furthermore, to the fullest extent permitted by law, CBOE V and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and each Exchange Subsidiary, as applicable, for purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or

<sup>30</sup> Compare CBOE Holdings Charter, Arts. ELEVENTH, TWELFTH and CBOE Holdings Bylaws, Section 10.2 with BGM Charter, Art. FOURTEENTH and BGM Bylaws, Article XI.

<sup>31</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGA-2013-34; SR-EDGX-2013-43).

<sup>32</sup> 15 U.S.C. 78f(b).

<sup>33</sup> 15 U.S.C. 78s(g).

<sup>34</sup> Delaware Limited Liability Company Act § 18-201.

<sup>35</sup> CBOE V Operating Agreement, Section 1.1.

<sup>36</sup> CBOE V Operating Agreement, Section 5.1.

<sup>37</sup> See CBOE V Operating Agreement, Section 10.1(a).

<sup>38</sup> See CBOE V Operating Agreement, Section 10.2(a).

<sup>39</sup> *Id.*

regulations thereunder arising out of, or relating to, the activities of such Exchange Subsidiary.<sup>40</sup>

The proposed CBOE V Operating Agreement also contains a number of provisions designed to ensure that the Exchange will have sufficient access to the books and records of CBOE V as they relate to any Exchange Subsidiary. Pursuant to the CBOE V Operating Agreement, to the extent they are related to the operation or administration of an Exchange Subsidiary, the books, records, premises, officers, agents, and employees of CBOE V are deemed to be the books, records, premises, officers, agents and employees of such Exchange Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.<sup>41</sup> In addition, for as long as CBOE V controls, directly or indirectly, an Exchange Subsidiary, CBOE V's books and records shall be subject at all times to inspection and copying by the Commission and the applicable Exchange Subsidiary, provided that such books and records are related to the operation or administration of an Exchange Subsidiary.<sup>42</sup>

The proposed CBOE V Operating Agreement also provides that, to the fullest extent permitted by law, all books and records of any Exchange Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Exchange Subsidiary (including disciplinary matters, trading data, trading practices and audit information) that comes into the possession of CBOE V, shall be retained in confidence by CBOE V, CBOE V's officers, employees and agents and CBOE Holdings, and not used for any non-regulatory purposes.<sup>43</sup> The proposed CBOE V Operating Agreement provides, however, that the foregoing shall not limit or impede the rights of the Commission or an Exchange Subsidiary to access and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or limit or impede the ability of CBOE Holdings or any of CBOE V's officers, employees or agents to disclose such confidential information to the Commission or an Exchange Subsidiary.<sup>44</sup>

In addition, the CBOE V Operating Agreement provides that for so long as CBOE V controls, directly or indirectly,

any Exchange Subsidiary, before any amendment to or repeal of any provision of the CBOE V Operating Agreement will be effective, those changes must be submitted to the board of directors of each Exchange Subsidiary, and if the same must be filed with, or filed with and approved by, the Commission before the changes may be effective under Section 19 of the Act<sup>45</sup> and the rules promulgated thereunder, then the proposed changes shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.<sup>46</sup>

#### 7. Direct Edge Operating Agreement

The Direct Edge Operating Agreement currently provides that the sole member of Direct Edge is BGM. However, as a result of the Transaction, CBOE V will become the sole member of Direct Edge. The Exchange proposes to amend the Direct Edge Operating Agreement to reflect this change, as set forth in Exhibit 5F.

#### 8. Bylaws of the Exchange

In connection with the Transaction, the Exchange proposes to amend and restate its Fifth Amended and Restated Bylaws and adopt the amended Exchange Bylaws as its Sixth Amended and Restated Bylaws, attached as Exhibit 5G. Specifically, the Exchange proposes to (i) expand the prohibition contained in Section 2 of Article XI of the Exchange Bylaws and (ii) add a definition of "Trading Permit Holder" to Article I.

Currently, Section 2 of Article XI of the Exchange Bylaws prohibits directors of BGM or Direct Edge who are not also directors, officers, staff, counsel or advisors of the Exchange from participating in any meetings of the Exchange's board of directors (or any committee thereof) pertaining to the self-regulatory function of the Exchange (including disciplinary matters). This provision refers to BGM and Direct Edge because they are currently the only direct and indirect owners of the Exchange. However, following the Transaction, the Exchange will be owned indirectly by CBOE V and CBOE Holdings (in addition to its direct ownership by Direct Edge). Therefore, the Exchange is proposing to remove the reference to BGM and insert references to CBOE V and CBOE Holdings, so that CBOE V and CBOE Holdings will both be covered by this prohibition. The Exchange believes that this amendment

will protect the independence of the Exchange's self-regulatory activities.

In addition, as noted above, the CBOE Holdings Charter currently prohibits certain persons from owning or exercising voting rights over certain percentages of ownership of CBOE Holdings. The CBOE Holdings Charter permits the board of directors of CBOE Holdings to waive the limitation on the exercise of voting rights in excess of 20 percent of the then outstanding votes entitled to be cast on such matter only if, among other things, "for so long as [CBOE Holdings] directly or indirectly controls any Regulated Securities Exchange Subsidiary, neither such Person nor any of its Related Persons is a 'Trading Permit Holder' (as defined in the Bylaws of any Regulated Securities Exchange Subsidiary as they may be amended from time to time)."<sup>47</sup>

The Exchange does not issue "trading permits," but admits members. The Exchange believes the provisions of the CBOE Holdings Charter that refer to Trading Permit Holders of its Regulated Securities Exchange Subsidiaries should apply equally to members of the Exchange once it becomes a Regulated Securities Exchange Subsidiary of CBOE Holdings. As a result, the Exchange proposes to add clause (ff) to Article I of the Exchange Bylaws, providing that " 'Trading Permit Holder' shall have the same meaning as Exchange Member." This will ensure that the Exchange's members will be considered Trading Permit Holders of a Regulated Securities Exchange Subsidiary for purposes of the CBOE Holdings Charter.

#### 9. Exchange Rules

##### a. Exchange Rule 2.3—Member Eligibility

Pursuant to Exchange Rule 2.3, in order to be eligible for membership in the Exchange, a registered broker or dealer is currently required to be a member of at least one other national securities association or national securities exchange. However, membership in the Exchange's affiliated national securities exchanges, BZX, BYX or EDGA, is not sufficient for purposes of eligibility for Exchange membership. The Exchange adopted this because the Bats Exchanges have historically not functioned as the designated examining authority for any of its members, and the Exchange wanted to be sure that any member would be appropriately supervised by another national securities association or national securities exchange that has

<sup>40</sup> See CBOE V Operating Agreement, Section 10.3(a).

<sup>41</sup> See CBOE V Operating Agreement, Section 8.4(b).

<sup>42</sup> *Id.*

<sup>43</sup> See CBOE V Operating Agreement, Section 8.4(a).

<sup>44</sup> *Id.*

<sup>45</sup> 15 U.S.C. 78s.

<sup>46</sup> See CBOE V Operating Agreement, Section 11.2.

<sup>47</sup> See CBOE Holdings Charter, Art. SIXTH, para. (a)(ii)(C).

the capacity to function as the member's designated examining authority.

As a result of the Transaction, the Exchange will additionally become affiliated with the CBOE Exchanges. As with the Bats Exchanges, C2 does not currently serve as the designated examination authority for any of its members. CBOE, however, does act as the designated examining authority for certain of its members. Therefore, the Exchange proposes to amend Exchange Rule 2.3 to specify that a registered broker or dealer will be eligible for membership only if it is a member of a national securities association or national securities exchange other than or in addition to the following affiliates of the Exchange: BZX, BYX, EDGA and C2.

In addition, to ensure there is no confusion with respect to the possibility that a broker or dealer could qualify for membership in the Exchange based solely on membership in CBOE Futures or any other national securities exchange notice—registered with the Commission pursuant to Section 6(g) of the Act<sup>48</sup> that lists or trades security-futures products, the Exchange proposes to also specify that eligibility for membership requires membership in a national securities association registered pursuant to Section 15A of the Act or a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, so as to exclude a national securities exchange registered solely under Section 6(g) of the Act. The proposed amendments to Exchange Rule 2.3 are set forth in Exhibit 5H.

#### b. Exchange Rule 2.10—Affiliation Between Exchange and a Member

Exchange Rule 2.10 provides that, without prior approval of the Commission, neither the Exchange, nor any of its affiliates, shall directly or indirectly acquire or maintain an ownership interest in a member of the Exchange. This restriction is intended to address potential conflicts of interest that could result from affiliation between the Exchange and a member. Notwithstanding this general restriction, Exchange Rule 2.10 provides that it does not prohibit a member or its affiliate from acquiring or holding an equity interest in BGM that is permitted by the ownership and voting limitations contained in the BGM Charter and the BGM Bylaws. In addition, Exchange Rule 2.10 states that it does not prohibit a member from being or becoming an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, solely by reason of such member or any officer,

director, manager, managing member, partner or affiliate of such member being or becoming either (a) a director of the Exchange pursuant to the Bylaws of the Exchange, or (b) a director of the Exchange serving on the board of directors of BGM. The Exchange proposes to replace the references to BGM in Rule 2.10 with references to CBOE Holdings to reflect the fact that following the Transaction, CBOE Holdings will replace BGM as the ultimate parent holding company of the Exchange.

Exchange Rule 2.10 also clarifies that it does not prohibit the Exchange from being an affiliate of its routing broker-dealer Direct Edge ECN LLC d/b/a DE Route (“DE Route”) or of EDGA, BZX, BYX, or Bats Trading, each of which are affiliated with the Exchange. The Exchange proposes to remove the reference to DE Route to reflect the fact that Bats Trading previously replaced DE Route as the Exchange's routing broker-dealer.<sup>49</sup> The Exchange also proposes to add references to the CBOE Exchanges, as the CBOE Exchanges will become new affiliated exchanges following the Transaction. The proposed amendments to Exchange Rule 2.10 are set forth in Exhibit 5H.

#### c. Exchange Rule 2.12—Bats Trading, Inc. as Inbound Router

Exchange Rule 2.12 provides that the Exchange, on behalf of BGM, shall establish and maintain procedures and internal controls reasonably designed to ensure that Bats Trading does not develop or implement changes to its systems on the basis of nonpublic information obtained as a result of its affiliation with the Exchange until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange. The Exchange proposes to replace the reference to BGM with a reference to “the holding company indirectly owning the Exchange and Bats Trading.” This change would reflect the fact that BGM would no longer be the ultimate holding company of the Exchange following the Transaction and would also make this language consistent with the language used in Rule 2.12 of the BZX and BYX rulebooks. The proposed amendments to Exchange Rule 2.12 are set forth in Exhibit 5H.

#### 2. Statutory Basis

The Exchange believes that the Proposed Rule Change 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>50</sup> In particular, the proposal is consistent with Section 6(b)(1) of the Act<sup>51</sup> in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the Rules of the Exchange.

The Proposed Rule Change is designed to enable the Exchange to continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. In particular, the Proposed Rule Change includes in the CBOE Holdings Charter and CBOE Holdings Bylaws, like the BGM Charter and BGM Bylaws, various provisions intended to protect and maintain the integrity of the self-regulatory functions of the Exchange upon Closing. For example, the CBOE Holdings Charter, as described above, is drafted to preserve the independence of the Exchange's self-regulatory function and carry out its regulatory responsibilities under the Act. In addition, the CBOE Holdings Charter imposes limitations similar to the BGM Ownership Limitation and BGM Voting Limitation to preclude undue influence over or interference with the Exchange's self-regulatory functions and fulfillment of its regulatory duties under the Act.

Moreover, notwithstanding the Proposed Rule Change, including the change to the indirect ownership of the Exchange, the Commission will continue to have regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect parent companies with respect to activities related to the Exchange.<sup>52</sup> As a result, the Proposed Rule Change will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect parent

<sup>50</sup> 15 U.S.C. 78f(b).

<sup>51</sup> 15 U.S.C. 78f(b)(1).

<sup>52</sup> See, e.g., CBOE Holdings Charter, Art. FOURTEENTH; CBOE V Operating Agreement, Section 10.3; Direct Edge Operating Agreement, Section 10.3.

<sup>49</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGA-2013-34; SR-EDGX-2013-43).

<sup>48</sup> 15 U.S.C. 78f(g).



companies and their directors, officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that the Proposed Rule Change furthers the objectives of Section 6(b)(5) of the Act<sup>53</sup> because the Proposed Rule Change would be consistent with and facilitate a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and 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.

In addition, as discussed further in the Exchange's Statement on Burden on Competition below, the Exchange expects that the Transaction will foster further innovation while facilitating efficient, transparent and well-regulated markets for issuers and investors, removing impediments to, and perfecting the mechanism of a free and open market and a national market system. The Transaction will benefit investors and the securities market as a whole by, among other things, enhancing competition among securities venues and reducing costs.

Furthermore, the Exchange is not proposing any significant changes to its existing operational and trading structure in connection with the change in ownership; the Exchange will operate in essentially the same manner upon Closing as it operates today. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. The changes that the Exchange is proposing to the Exchange Rules are designed to reflect the prospective affiliation with CBOE Holdings and the CBOE Exchanges. The Exchange believes that the proposed change to its Rules is consistent with the requirements of the Act and the rules and regulations thereunder.

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

The Exchange does not believe that the Proposed Rule Change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the

Exchange believes that the Proposed Rule Change will enhance competition among trading venues, as the Exchange believes that the Transaction will result in various synergies and efficiencies. For example, the Transaction will allow the Bats Exchanges and the CBOE Exchanges to utilize a single technology platform, which the Exchange expects will reduce Bats Exchanges' and the CBOE Exchanges' combined costs, creating the opportunity to further reduce costs to their respective members and other constituents. The potential use of a single technology platform may also reduce investors' costs of connecting to and using the Bats Exchanges and the CBOE Exchanges, including through the combination of data centers and market data services. Combining the expertise of the CBOE Exchanges' personnel with the expertise of the Bats Exchanges' personnel will also facilitate ongoing innovation, including through new product creation and platform improvements.

The Exchange notes that the Bats Exchanges and the CBOE Exchanges generally operate with different business models, target different customer bases and primarily focus on different asset classes, limiting any concern that the Transaction could burden competition. Therefore, the Exchange expects that the Transaction will benefit investors, issuers, shareholders and the market as a whole. The Exchange will continue to conduct regulated activities (including operating and regulating its market and members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its members. These efficiencies will pass through to the benefit of investors and issuers, promoting further efficiencies, competition and capital formation, placing no burden on competition not necessary or appropriate in furtherance of the Act.

Furthermore, the Exchange's conclusion that the Proposed Rule Change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act is consistent with the Commission's prior conclusions about similar combinations involving multiple exchanges in a single corporate family.<sup>54</sup>

<sup>54</sup> See, e.g., Securities Exchange Act Release Nos. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039); 66071 (December 29, 2011), 77 FR 521 (January 5, 2012) (SR-CBOE-2011-107 and SR-NSX-2011-14); 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77).

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

The Exchange has not solicited or received written comments on the Proposed Rule Change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-BatsEDGX-2016-60 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-2016-60. 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

<sup>53</sup> 15 U.S.C. 78f(b)(5).

available for Web site 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-BatsEDGX-2016-60, and should be submitted on or before December 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>55</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-27369 Filed 11-14-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79262; File No. SR-BX-2016-153]

### Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Commentary .14 to Rule 4770 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)

November 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. 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 proposes to amend Commentary .14 to Rule 4770 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) to provide the SEC with notice of its efforts

to re-program its systems to eliminate a re-pricing functionality for certain orders in Test Group Three securities in connection with the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan" or "Pilot").<sup>3</sup>

The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

\* \* \* \* \*

#### NASDAQ BX Rules

\* \* \* \* \*

#### 4770. Compliance With Regulation NMS Plan To Implement a Tick Size Pilot

(a) through (d) No Change.

#### Commentary

.01-.13 No change.

.14 Until [October 31, 2016]

November 14, 2016, the treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities shall be as follows:

Following entry, and if market conditions allow, a Price to Comply Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Price to Display Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Display Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.

Following entry, and if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

\* \* \* \* \*

#### 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 aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On September 7, 2016, the Exchange filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change ("Proposal") to adopt paragraph (d) to Exchange Rule 4770 to describe changes to system functionality necessary to implement the Plan. The Exchange also proposed amendments to Rule 4770(a) and (c) to clarify how the Trade-at exception may be satisfied. The SEC published the Proposal in the **Federal Register** for notice and comment on September 20, 2016.<sup>4</sup> BX subsequently filed three Partial Amendments to clarify aspects of the Proposal. The Commission approved the Proposal, as amended, on October 7, 2016.<sup>5</sup>

In SR-BX-2016-050, BX had initially proposed a re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Group Three securities.<sup>6</sup> BX subsequently determined that it would not offer this re-pricing functionality for

<sup>4</sup> See Securities Exchange Act Release No. 78838 (September 14, 2016), 81 FR 64566 (September 20, 2016) (SR-BX-2016-050).

<sup>5</sup> See Securities Exchange Act Release No. 79076 (October 7, 2016) (SR-BX-2016-050).

<sup>6</sup> As originally proposed, Rule 4770(d)(2) stated that Price to Comply Orders in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price. Rule 4770(d)(3) stated that, if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. Rule 4770(d)(4) stated that, if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the BX Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

<sup>55</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> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").