

under Section 5(b)(ii) of the Linkage Plan. Section 5(b)(ii) of the Linkage Plan, the Trading Rotation exception, permits a participant exchange to trade through a Protected Quotation disseminated by an Eligible Exchange during a trading rotation.

The proposed iterative opening process will provide market makers and other market participants greater opportunity to participate at the open and provide option classes with an increased chance to determine an opening price which removes impediments to a free and open market and benefits all market participants.

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

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange's inability to provide away market protection limits competition in that other exchanges currently provide such protection and therefore are able to attract pre-opening order flow. Thus, approval of the proposed rule change will promote intermarket competition because it will allow the Exchange to, among other things, provide away market price protection at the open and thus, compete with other exchanges for order flow that market participants do not currently send to the ISE. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition. The Exchange believes the proposed rule change will encourage ISE Members to send their pre-open order flow to the Exchange rather than to a competing exchange and will therefore increase competition at the open.

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

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

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

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-

regulatory organization 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 Exchange 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 No. SR-ISE-2014-24 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-ISE-2014-24. 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 the filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2014-24 and should be submitted by December 31, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-73745; File No. SR-BATS-2014-062]

### **Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.1 of BATS Exchange, Inc.**

December 4, 2014.

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 28, 2014, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend Rule 11.1 to accept orders beginning at 6:00 a.m. Eastern Time.

The text of the proposed rule change is available at the Exchange's Web site at <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.

<sup>22</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.

*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 Rule 11.1 to accept orders beginning at 6:00 a.m. Eastern Time. Earlier this year, the Exchange and its affiliate, BATS Y-Exchange, Inc. ("BYX"), received approval to effect a merger (the "Merger") of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX Exchange, Inc. ("EDGX"), and EDGA Exchange, Inc. ("EDGA") (together with BZX, BYX and EDGX, the "BGM Affiliated Exchanges").<sup>3</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges.

The Exchange currently accepts orders commencing at the beginning of the Pre-Opening Trading Session, which is defined in Rule 1.5(r) as the time between 8:00 a.m. and 9:30 a.m. Eastern Time. In contrast, EDGA and EDGX begin accepting orders starting at 6:00 a.m. Eastern Time.<sup>4</sup> As proposed, the Exchange will accept orders into the System from 6:00 a.m. until 8:00 p.m. Eastern Time. Orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time will not be eligible for execution until the start of the Pre-Opening Session or Regular Trading Hours, depending on the Time in Force selected by the User. Orders designated for Regular Trading Hours will continue to be queued during the Pre-Opening Session and queued for the Exchange's Opening Auction for Exchange-listed securities or Opening Process for non-Exchange-listed securities.<sup>5</sup>

The Exchange also proposes to specify in Rule 11.1 the order types and order modifiers that the Exchange will not accept before 8:00 a.m. Eastern Time, each of which the Exchange believes is inconsistent with an order that is queued and awaiting placement on an

order book as opposed to entered during a trading session where continuous trading is occurring. Specifically, the Exchange will not accept the following orders prior to 8:00 a.m. Eastern Time: BATS Post Only Orders,<sup>6</sup> Partial Post Only at Limit Orders,<sup>7</sup> intermarket sweep orders ("ISOs"),<sup>8</sup> BATS Market Orders<sup>9</sup> with a Time in Force other than Regular Hours Only ("RHO"),<sup>10</sup> Minimum Quantity Orders<sup>11</sup> with a Time in Force of RHO, and all orders with a Time in Force of Immediate or Cancel ("IOC") or Fill-or-Kill ("FOK").<sup>12</sup> The Exchange reiterates that it is proposing to reject the order types and modifiers described above between 6:00 a.m. and 8:00 a.m. because each is inconsistent with an order designated to queue for later entry onto the Exchange's order book. For instance, because orders received prior to 8:00 a.m. are not immediately executable, but rather queued for later participation, BATS Post Only Orders, Partial Post Only at Limit Orders, BATS Market Orders that are not designated as RHO (i.e., not designated to queue), IOC and FOK orders do not make sense in the context of the proposed rule change and, thus, the Exchange is proposing to reject them prior to 8:00 a.m. Specifically with respect to BATS Post Only Orders and Partial Post Only at Limit Orders, although the Exchange could accept such orders and place them on the BATS Book at 8:00 a.m. in the order they were received, as described below, the Exchange does not believe such orders are consistent with the purpose of the amendment given that such orders are typically intended to provide liquidity and during the time period they are queued they will not be executable on the BATS Book. Similarly, because an order designated as an ISO implies that there is currently a protected bid or offer and there are no protected bids or offers prior to 9:30 a.m. Eastern Time, the Exchange proposes to reject any ISOs entered prior to 8:00 a.m. Finally, the Exchange proposes to reject Minimum Quantity Orders designated as RHO, which are also rejected pursuant to the Exchange's

Opening Process<sup>13</sup> in order to maintain consistency with such process.

At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order. Thus, although orders are queued until 8:00 a.m. Eastern Time, orders will be processed sequentially in exactly the same way they would be if they arrived at the commencement of operations of the Exchange. The Exchange notes that it does not believe that the proposed functionality will be used in order to achieve executions with latency considerations in mind, as Users seeking executions prior to 8:00 a.m. have other options available to them, as there are several trading venues that are fully open for trading prior to 8:00 a.m.<sup>14</sup> Rather, the functionality is available to Users that simply want their orders entered to the BATS book at the start of the trading day or to queue for the Exchange's Opening Auction or Opening Process, as applicable. All orders queued prior to 8:00 a.m. will be processed ahead of orders that are received after the commencement of the Pre-Opening Session.

2. Statutory Basis

The Exchange believes that the rule change proposed in this submission 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>15</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>16</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, and, in general, to protect investors and the public interest. The Exchange believes that allowing for the entry of orders prior to the Pre-Opening Session will allow Users to enter orders in an orderly fashion prior to the commencement of trading on the Exchange, rather than requiring such Users to submit orders when trading commences at 8:00 a.m. Eastern Time. Specifically, the implementation of the proposed rule change will provide Users with greater control and flexibility with respect to

<sup>6</sup> A BATS Post Only Order is defined in Rule 11.9(c)(6).

<sup>7</sup> A Partial Post Only at Limit Order is defined in Rule 11.9(c)(7).

<sup>8</sup> An ISO is defined in Rule 11.9(d).

<sup>9</sup> A BATS Market Order is defined in Rule 11.9(a)(2).

<sup>10</sup> The Time in Force of Regular Hours Only, or RHO, is defined in Rule 11.9(b)(7).

<sup>11</sup> A Minimum Quantity Order is defined in Rule 11.9(c)(5).

<sup>12</sup> The Time in Force of Immediate or Cancel, or IOC, is defined in Rule 11.9(b)(1) and the Time in Force of Fill-or-Kill, or FOK, is defined in Rule 11.9(b)(6).

<sup>13</sup> See Rule 11.24(a).

<sup>14</sup> See *infra* note 17.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

<sup>4</sup> See EDGX Rule 11.1(a)(1) and EDGA Rule 11.1(a)(1).

<sup>5</sup> The Exchange's Opening Auction for Exchange-listed securities is described in Rule 11.23. The Exchange's Opening Process for non-Exchange-listed securities is described in Rule 11.24.

entering orders, allowing them to enter orders for later participation during the Pre-Opening Session or Regular Trading Hours, rather than waiting for the applicable trading session to begin. This simplifies the order entry process for Users that have orders that they wish to submit to the Exchange prior to 8:00 a.m. by allowing such Users to send rather than hold such orders, which removes impediments to a free and open market and benefits all Users of the Exchange.

The Exchange also believes that rejecting BATS Post Only Orders, Partial Post Only at Limit Orders, ISOs, non-RHO BATS Market Orders, Minimum Quantity Orders with a Time in Force of RHO, IOC and FOK orders prior to 8:00 a.m. Eastern Time 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, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because, as described above, such order types do not make sense in the context of queuing orders (as opposed to continuous book trading).

#### *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. To the contrary, allowing the Exchange to accept orders prior to 8:00 a.m. Eastern Time for participation during the Pre-Opening Session and/or Regular Trading Hours fosters competition in that other exchanges<sup>17</sup> are able to begin accepting orders in such securities, while the Exchange cannot accept such orders. Thus, approval of the proposed rule change will promote competition because it will allow the Exchange to offer its Users the ability to enter orders prior to the beginning of the Pre-Opening Session for queuing and thus compete more directly with other exchanges for order flow that a User may not have directed to the Exchange if they were not able to enter orders for queuing.

<sup>17</sup> Nasdaq, for instance, begins accepting orders at 4:00 a.m. Eastern Time. See, Nasdaq Rule 4617. NYSE Arca Equities begins accepting and queues orders beginning at 3:30 a.m. Eastern Time with its first trading session commencing at 4:00 a.m. Eastern Time. See "Holiday Hours—All Markets; NYSE Arca Equities," available at <https://www.nyse.com/markets/hours-calendars>.

#### *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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> 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 prior to 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) of the Act and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>21</sup> of the Act 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

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<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> 15 U.S.C. 78s(b)(2)(B).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2014-062 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-BATS-2014-062. 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 at 100 F Street NE., Washington, DC 20549-1090 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-BATS-2014-062, and should be submitted on or before December 31, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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