

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81936; File No. SR-BatsEDGA-2017-27)

October 24, 2017

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make Technical Corrections to its Second Amended and Restated Certificate of Incorporation

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 October 13, 2017, Bats EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The 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 seeks to amend its Second Amended and Restated Certificate of Incorporation. The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
of  
BATS EDGA EXCHANGE, INC.**

The name of the corporation is Bats EDGA Exchange, Inc. The corporation filed its original Certificate of Incorporation with the Secretary of State of the State of Delaware on March 9, 2009 under the name EDGA Exchange, Inc. This Second Amended and Restated

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

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

Certificate of Incorporation of the corporation, which restates and integrates and also further amends the provisions of the corporation's Restated Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the written consent of its sole stockholder in accordance with Section 228 of the General Corporation Law of the State of Delaware. The [Second Amended and] Restated Certificate of Incorporation of the corporation is hereby amended, integrated and restated to read in its entirety as follows:

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The text of the proposed rule change is available at the Exchange's website at [www.bats.com](http://www.bats.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

EDGA recently amended its Restated Certificate of Incorporation in connection with a corporate transaction (the "Transaction") involving, among other things, the recent acquisition of EDGA, along with Bats BYX Exchange, Inc. ("Bats BYX"), Bats BZX Exchange, Inc. ("Bats BZX"), and Bats EDGX Exchange, Inc. ("Bats EDGX" and, together with Bats EDGA, Bats

BYX, and Bats BZX, the “Bats Exchanges”) by CBOE Holdings, Inc. (“CBOE Holdings”). CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated (“CBOE”) and C2 Options Exchange, Incorporated (“C2”). Particularly, the filing proposed, among other things, to amend and restate the certificate of incorporation of the Exchange based on certificates of incorporation of CBOE and C2.<sup>3</sup> The Exchange notes that in conforming the Exchange’s Certificate to the certificates of CBOE and C2, it inadvertently (i) did not comply with a provision of Delaware law and (ii) referred to an inaccurate version of the Certificate in the introductory paragraph. The Exchange seeks to correct those errors.

Particularly, Section 245(c) of the Delaware General Corporation Law (DGCL) requires that a restated certificate of incorporation “shall state, either in its heading or in an introductory paragraph, the corporation’s present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the secretary of state.” The Exchange notes that the conformed Certificate did not reference the name under which the corporation was originally incorporated (i.e., “EDGA Exchange, Inc.”). In order to comply with Section 245(c) of the DGCL, the Exchange proposes to amend its Certificate to add a reference to its original name.

The Exchange also notes that it inadvertently did not reference the correct version of the Certificate in two places in the introductory paragraph. Particularly, the Exchange notes that the third sentence of the introductory paragraph provides that the Second Amended and Restated Certificate of Incorporation of the corporation restated and integrated and also further amended the provisions of the corporation's “Certificate of Incorporation” instead of the then current (and

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<sup>3</sup> See Securities Exchange Act Release No. 81496 (August 30, 2017), 82 FR 42206 (September 6, 2017) (SR-BatsEDGA-2017-22).

now previous) version titled, “Restated Certificate of Incorporation”. Additionally, the last sentence of the introductory paragraph which provides that the current certificate is “amended, integrated and restated to read in its entirety as follows:” mistakenly references the new title of the amended Certificate (i.e., “Second Amended and Restated Certificate of Incorporation”) instead of the title of the then current (and now previous) Certificate (“Restated Certificate of Incorporation”). As such, the Exchange proposes to add “Restated” to the third sentence and eliminate the new title reference “Second Amended and” from the last sentence to accurately reflect the correct version of the Certificate that was amended and restated.

The Exchange notes that the proposed changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be 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

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

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

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes correcting inadvertent non-substantive, technical errors in its Certificate in order to comply with Delaware law and reflect the correct and accurate version of the Certificate that was amended will avoid potential confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest of market participants. As noted above, the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way.

(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. Rather, the proposed rule change is merely attempting to correct inadvertent technical errors in the Exchange's introductory paragraph of its Certificate. The proposed rule change has no impact on competition.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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<sup>6</sup> Id.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and paragraph (f) of Rule 19b-4<sup>8</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsEDGA-2017-27 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.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-BatsEDGA-2017-27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-BatsEDGA-2017-27 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Robert W. Errett  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).