

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77508; File No. SR-BatsEDGX-2016-03)

April 4, 2016

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Changes in Connection with the Operation of the Exchange's Equity Options Platform

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 24, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to make a modification to Rule 21.1 (Definitions) in connection with the operation of the attribution feature of EDGX Options, as described below. In addition, the Exchange proposes to adopt definitions of "Priority Customer" and "Priority Customer Order" in Rule 16.1 and to use such definitions throughout Rules 21.8, 21.10 and 21.15. Finally, the Exchange also proposes related changes to Rules 20.6 and 21.8.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

The text of the proposed rule change is available at the Exchange’s website at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

As further described below, the Exchange is proposing to modify Rule 21.1(c) to remove the limitation related to Customer orders to allow such orders to be Attributable Orders (as such terms are defined below). In addition, the Exchange proposes to adopt definitions of “Priority Customer” and “Priority Customer Order” in Rule 16.1 and to use such definitions throughout Rules 21.8, 21.10 and 21.15. Finally, the Exchange also proposes related changes to Rules 20.6 and 21.8.

Attributable Orders

The Exchange is proposing to modify Rule 21.1, Definitions, which sets forth the various definitions applicable to the operation of the EDGX Options platform, including order types and order type modifiers accepted by EDGX Options. As set forth in Rule 21.1, an order can be attributed on EDGX Options, meaning that such order is displayed with not only a price and size

but also a User's⁵ market participant identifier, or MPID (such order an "Attributable Order"). Alternatively, a User may also submit an order that is designated for display on an anonymous basis, a "Non-Attributable Order." In addition to attribution, as discussed in Rule 21.1, Exchange Rule 21.15(c) states that the Exchange will indicate on OPRA when there is "Customer" (the definition of which is described below) interest on EDGX Options and will identify Customer orders and trades as such on the Exchange's proprietary data feeds.

Recently, the Exchange modified Rule 21.1(c) to limit the use of Attributable Orders to non-Customers, thereby eliminating the ability for a Customer Order to also be an Attributable Order.⁶ Thus, Rule 21.1(c) states that all non-Customer Orders shall be treated as Attributable Orders unless a User has entered instructions to treat such orders as Non-Attributable Orders. Further, Rule 21.1(c) states that all Customer Orders are treated as Non-Attributable Orders. The Exchange did not make the change set forth above due to concerns with respect to Customer orders being entered as Attributable Orders but rather due to system limitations in supporting both the attribution feature and the identification of Customer orders as such. The Exchange is now able to accept a Customer order that is both identified as such and attributed to a specified MPID. The Exchange therefore proposes to modify Rule 21.1(c) to remove the limitation related to Customer orders to allow such orders to be Attributable Orders. The Exchange notes that this proposed change will return the Exchange's rules to their prior form, by accepting Attributable Orders regardless of the capacity designated on the order.

⁵ The term User is defined in Rule 1.5(ee) as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

⁶ Securities Exchange Act Release No. 77036 (February 2, 2016), 81 FR 6552 (February 8, 2016) (SR-EDGX-2016-01).

Definition and Use of Term “Priority Customer” and “Priority Customer Order”

In addition to the change described above, the Exchange proposes changes to Rules 16.1 to adopt definitions of “Priority Customer” and “Priority Customer Order” in Rule 16.1 and to use such definitions throughout Rules 21.8, 21.10 and 21.15. Specifically, in such Rules, the Exchange proposes to use the terms “Priority Customer” and “Priority Customer Order”, respectively, in place of the terms “Customer” and “Customer Order”. As proposed, a Priority Customer would mean any person or entity that is not: (A) a broker or dealer in securities; or (B) a Professional (as defined below). In turn, a Priority Customer Order would mean an order for the account of a Priority Customer. The proposed definitions are similar to and based on the definitions of the same terms set forth in MIAX Rule 100. The Exchange proposes to adopt these new definitions in new paragraph (a)(45) and to re-number existing paragraphs (a)(45) through (a)(47) as paragraphs (a)(46) through (a)(48). In addition, because the defined term “Public Customer Order” is not currently utilized in Exchange Rules, the Exchange proposes to delete this definition, which is currently contained in paragraph (a)(48).

Pursuant to Rule 16.1(a)(19) a “Customer” is defined as a Public Customer or a broker-dealer. Under Rule 16.1(a)(47), a “Public Customer” is defined as a person that is not a broker or dealer in securities (“broker-dealer”). The Exchange separately defines a “Professional” as any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The Exchange proposes to adopt the definition of Priority Customer to exclude both broker-dealers and Professionals. This change is consistent with the Exchange’s fee schedule, which already excludes Professionals from the definition of the term Customer for purposes of

pricing on the Exchange.⁷ This change is also consistent Exchange Rule 20.6(a)(1)⁸ and with the rules of other options exchanges.⁹

In addition, the Exchange proposes to modify Rules 21.8, 21.10, and 21.15 to refer to “Priority Customer” rather than “Customer” and “Priority Customer Order” rather than “Customer Order”, to more closely reflect the Exchange’s current implementation of the Rules, which follows the definition of Customer on the Exchange’s fee schedule and in Rule 20.6(a)(1) by excluding broker-dealers and Professionals. As noted above, the Exchange is also proposing to replace the phrase “Customer Order”, or in some instances “Customer order,” with the phrase “Priority Customer Order”.

The Exchange believes that each of these changes will more closely align the Exchange’s rules with the Exchange’s implementation of the Rules and the rules of other options exchanges.¹⁰ The Exchange believes that the original discrepancy was based in part on the use of the general term “Customer” in other Exchange Rules and on the Exchange’s fee schedule as noted above, which in such other contexts mirrors the definition of Priority Customer, as

⁷ See the EDGX Options fee schedule available at: http://www.batsoptions.com/support/fee_schedule/edgx. As defined on the fee schedule, a “Customer” is synonymous with the proposed term Priority Customer in the Exchange’s Rules as the definition excludes both broker dealers and Professionals as defined in EDGX Rule 16.1.

⁸ Rule 20.6(a)(1) similarly defines a Customer as a party other than a broker-dealer or Professional Customer. The Exchange also proposes to amend Rule 20.6(a)(1) to instead refer to a “Professional” as discussed below.

⁹ See, e.g., MIAX Rule 100, Definitions, which defines a “Priority Customer,” by excluding both broker dealers and customers who do not meet the criteria generally established by options exchanges to qualify as a Professional (i.e., 390 orders in listed options per day); see also ISE Rule 100(37A).

¹⁰ See, e.g., MIAX Rules 514, which closely resembles Exchange Rules 21.8 and uses the term Priority Customer, a term equivalent to the Exchange’s proposed definition of Priority Customer.

proposed.¹¹ The Exchange also believes that the intended application of the term Customer in Chapter 21 of the Exchange’s rules is also clear. In particular, the Exchange’s priority rule, Rule 21.8(e), explicitly refers to “non-Customers” as “including Professional Customers” when it discusses the priority algorithm that applies after execution of Customer (to be re-designated as “Priority Customer”) orders. Thus, the change from Customer to Priority Customer in Rule 21.8, 21.10 and 21.15 will conform the Exchange’s Rules to the current implementation by using a defined term that excludes broker-dealers and Professionals.

Additional Changes

To ensure clarity, the Exchange proposes related changes to Rule 21.8(d)(1) and Rule 21.8(e). Specifically, the Exchange proposes to restate the priority of Priority Customers as priority “over orders on behalf of all other types of participants” and to define all such other participants as non-Customers. As above, this change conforms the Rule to the Exchange’s implementation of the Rule as well as the way that the Exchange believes the Rule was proposed and approved when read in light of Rule 21.8(e). The Exchange believes that the amended Rule, however, sets forth in a more clear fashion the fact that all other participants other than Priority Customers, including Professionals and broker-dealers, are considered as non-Customers for purposes of the Rule. Based on this proposed change, the Exchange also proposes to remove the reference to “non-Customers, including Professional Customers” in Rule 21.8(e) and to instead refer to the definition of non-Customer that is proposed to be added to Rule 21.8(d)(1).

In addition to the proposed changes to utilize the term Priority Customer instead of Customer and the term Priority Customer Order instead of Customer Order in the Rules listed above, the Exchange also proposes to modify Rule 20.6(a)(1) to use the defined term of

¹¹ See supra, notes 6 and 7.

“Professional” rather than the term “Professional Customer,” which is not defined in Rule 16.1.

2. Statutory Basis

The Exchange believes that its proposal 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.¹² In particular, the proposal is consistent with Section 6(b)(5) of the Act¹³ because it 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 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.

The proposed rule change will allow the Exchange to accept Attributable Orders from all market participants, including Priority Customers, while also designating Priority Customer orders as such on applicable data feeds. As set forth above, the Exchange recently limited the use of Attributable Orders to non-Customers due to systems limitations but is now proposing to remove this limitation. The Exchange is therefore seeking to re-introduce the feature that was originally intended in connection with the launch of EDGX Options. The proposed rule change will also achieve consistency with respect to the use of the term “Priority Customer” and “Priority Customer Order” both internally in aligning with the implementation of such Rules as well as with the rules of other options exchanges. As set forth above, each of the changes proposed above will align the Exchange’s Rules with the current implementation of the Rules but will do so in a way that will avoid confusion regarding the application of the definitions used in

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

such Rules. The Exchange believes that the proposed change is consistent with the Act for the reasons set forth above.

(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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to make a modification to the Exchange's attribution offering to again permit Attributable Orders on behalf of all market participants, including Priority Customers. As noted above, this was the original intent when the Exchange's rules for EDGX Options were originally approved. The Exchange does not believe that such proposal, or the proposal to adopt the definitions of Priority Customer and Priority Customer Order as described above, will result in rules that are different than the rules of other options exchanges but rather that such rules will be better aligned with the implementation of the Exchange's Rules as well as the rules of other options exchanges.

(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 written comments from members or other interested parties.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section

19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6) under the Act¹⁶ normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is appropriate because it will allow the Exchange to immediately offer the originally intended attribution feature by permitting orders from all types of market participants to be attributable orders. Further, the Commission believes that the adoption of the terms “Priority Customer” and “Priority Customer Order” and the use of such terms as proposed will help to avoid confusion by participants on EDGX Options by aligning the Exchange’s rules with the rules of other options exchanges. Thus, the proposed definitions are similar to existing rules of other options exchanges and do not raise any new policy issues. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁸ The

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BatsEDGX-2016-03 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-2016-03. 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 such filing will also 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-2016-03 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.¹⁹

Robert W. Errett
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).