

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79041; File No. SR-BatsEDGX-2016-53)

October 4, 2016

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 22.3, Continuing Options Market Maker Registration, of Bats EDGX Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 28, 2016, Bats EDGX Exchange, Inc. (“EDGX” or the “Exchange”) 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 is proposing to make a modification to Exchange Rule 22.3, Continuing Options Market Maker Registration, to remove the provision of the rule that requires termination of a Member’s Options Market Maker registration in an option series if the Options Market Maker fails to enter quotations in the series within five business days after the Options Market Maker’s registration in the series becomes effective.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to amend Exchange Rule 22.3 to remove subparagraph (c), which currently requires the Exchange to terminate a firm's Options Market Maker registration if it does not enter quotations in an option series in which it is registered within five business days after the Options Market Maker's registration in the series becomes effective. Currently, the Exchange surveils whether a newly registered Options Market Maker enters quotations in the series within five business days of registration. If an Options Market Maker does not, the Exchange is required by Exchange Rule 22.3(c) to automatically deregister the Options Market Maker in that series. The Exchange views Exchange Rule 22.3(c) as largely duplicative of other Exchange Rules and excessively rigid in view of other Exchange Rules that allow the Exchange discretion and flexibility in determining an appropriate remedy.

Exchange Rule 22.5(a)(6) provides that Options Market Makers are expected to "maintain active markets" in all series in which they are registered. Both Rule 22.3(c) and Rule 22.5(a)(6) impose an obligation upon registered Options Market Maker to maintain active markets. The main difference is that Exchange Rule 22.3(c) applies only to the first five days

that an Options Market Maker is registered, whereas Exchange Rule 22.5(a)(6) applies during the first five days and continues for as long as the Options Market Maker is registered in a series. The Exchange believes that there is no benefit to imposing stricter quoting obligations on a newly registered Options Market Maker than those imposed on existing registered Options Market Makers. Instead, in the Exchange's view, the requirement to maintain active markets should be the same from when an Options Market Maker first registers as any time after registration.

The Exchange notes that it will continue to be permitted to deregister a registered Options Market Maker under Exchange Rule 22.2(b) if it is found that the Options Market Maker has failed in its obligation to maintain active markets under Exchange Rule 22.5(a)(6) or fails its obligation to provide continuous two-sided quotes under Rule 22.6(d).³ Removing Exchange Rule 22.3(c) would simply remove the non-discretionary requirement that the Exchange must deregister an Options Market Maker's registration in a series if it does not enter quotations in the series within five business days of registration.

The Exchange currently conducts surveillance to monitor and enforce compliance with the "active markets" provision of Exchange Rule 22.5(a)(6) for all Options Market Makers. A registered Options Market Maker is subject to the Exchange Rule 22.5(a)(6) surveillance for the entire time the Options Market Maker is registered, including the first five days covered by Exchange Rule 22.3(c). If a registered Options Market Maker is found by surveillance not to be maintaining active markets in the option series in which it is registered, the Exchange will determine the appropriate course of action against such Options Market Maker. The Exchange

³ See Exchange Rule 22.2(b) ("The registration of any Member as a Market Maker may be suspended or terminated by the Exchange upon a determination that such Member has failed to properly perform as a Market Maker.")

may take actions of escalating severity against the offending Options Market Maker from an informal warning up to deregistering the Options Market Maker in the options in which it fails to maintain active markets or bringing formal action.⁴ The Exchange has found that this discretion has allowed for effective enforcement of Options Market Maker obligations while allowing the Exchange to consider the facts and circumstances of each case in determining the appropriate remedy.

On the other hand, current Exchange Rule 22.3(c) is non-discretionary and its enforcement can lead to potentially arbitrary results, as it does not permit the Exchange to consider the facts and circumstances of each case in enforcing the rule. While as a general matter an Options Market Maker should enter quotations in a series in which it is registered as soon as practicable, experience has shown that many factors can affect when a newly registered Options Market Maker will be in a position to begin entering quotations. Further, as discussed above [sic], Exchange Rule 22.6(d) contemplates certain acceptable periods of inactivity. Just as the Exchange is provided discretion to enforce all Options Market Maker obligations under Exchange Rule 22.2(b), the Exchange believes that it should be afforded the same discretion to evaluate the facts and circumstances of each case in which an Options Market Maker is not active in a series within the first five days of registration and determine the appropriate remedy.

Finally, other national options exchanges do not require automatic deregistration of a registered Options Market Maker from an options series when the Options Market Maker fails to submit a quote within the first five days of registration. Other exchanges allow considerably more discretion in determining the appropriate remedy for a registered Options Market Maker that fails its quoting obligations. For example, neither the Chicago Board Options Exchange

⁴ See Exchange Rules 22.2(b) and 22.5(c).

("CBOE"), nor the Miami International Securities Exchange ("MIAX"), nor NYSE Arca, Inc. Options ("NYSE Arca"), has a requirement to automatically deregister an options market maker if it fails in its quoting or other obligations within five days of registration. Instead, each of the above exchanges appears to rely on a rule substantively identical to Exchange Rule 22.2(b) that gives the respective exchange discretion as to the appropriate remedy for Options Market Makers that do not meet their obligations.⁵

The Exchange, therefore, proposes to amend Exchange Rule 22.3 to remove subparagraph (c) and to enforce its Options Market Maker "active market" obligations with the remedies permitted in Exchange Rule 22.2(b) and Exchange Rule 22.5(c).

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.⁶

In particular, the proposal is consistent with Section 6(b)(1)⁷ 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 Exchange Act and to comply, and to enforce compliance by its exchange members and persons

⁵ See CBOE Rule 8.2(b) ("The registration of a Market-Maker may be suspended or terminated by the Exchange upon a determination that the Market-Maker has failed to properly perform as a Market-Maker."); MIAX Rule 600(c) ("The registration of any Member as a Lead Market Maker, Primary Lead Market Maker, or as a Registered Market Maker may be suspended or terminated by the Exchange upon a determination that such Member has failed to properly perform as a Market Maker"); NYSE Arca Options Rule 6.33 ("The registration of any person as a Market Maker may be suspended or terminated by the Exchange upon a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with [Market Maker Obligations].").

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(1).

associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The proposal allows the Exchange the discretion so that it may appropriately and equitably enforce compliance by its members with the rules of the Exchange – in particular, the Exchange’s Options Market Maker obligations.

Additionally, the proposal is consistent with Section 6(b)(5) of the Act⁸ 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 amendment to remove Exchange Rule 22.3(c) will permit the Exchange to consider all facts and circumstances in instances where it appears that a registered Options Market Maker does not meet its obligations and to exercise discretion in applying the appropriate remedy for such failure.

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 does not introduce any burden on competition, but rather, removes the automatic deregistration requirement of Exchange Rule 22.3(c) to allow the Exchange to apply the obligation to maintain active markets to all registered Options Market Makers equally.

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

⁸ 15 U.S.C. 78f(b)(5).

interested parties.

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

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁰ the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its 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.

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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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:

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4.

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-2016-53 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-BatsEDGX-2016-53. 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 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-2016-53, 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.¹¹

Robert W. Errett
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).