

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73477; File No. SR-EDGA-2014-24)

October 30, 2014

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.12, Limitation of Liability

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 October 27, 2014, EDGA Exchange, Inc. (the “Exchange” or “EDGA”) 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 amend Rule 11.12, Limitation of Liability, to harmonize its liability caps with those set forth under BATS Exchange, Inc. (“BATS”) Rule 11.16 and BATS Y-Exchange, Inc. (“BYX”) Rule 11.16.⁵

The text of the proposed rule change is available at the Exchange’s website at <http://www.directedge.com/>, at the principal office of the Exchange, and at the

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).

⁵ See BATS Rule 11.16(d)(1) - (3); BYX Rule 11.16(d)(1) - (3).

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

The Exchange proposes to amend Rule 11.12, Limitation of Liability, to harmonize its liability caps with those set forth under BATS Rule 11.16 and BYX Rule 11.16.⁶ Earlier this year, the Exchange and its affiliate EDGX Exchange, Inc. ("EDGX") received approval to effect a merger (the "Merger") of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BATS and BYX (together with BATS, BYX, EDGA and EDGX, the "BGM Affiliated Exchanges").⁷ In the context of the Merger, the BGM Affiliated Exchanges are working to align certain rules, retaining only intended differences between the BGM Affiliated Exchanges. As part of this effort, BATS and BYX recently filed proposed rule changes with the Commission to amend paragraph (f) of Rule 11.16 to align with EDGA Rule

⁶ Id.

⁷ See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43; SR-EDGA-2013-34).

11.12(d)(3) and (e) as well as EDGX Rule 11.12(d)(3) and (e).⁸ Thus, the proposal set forth below harmonizes remaining sections of Exchange Rule 11.12 and BATS and BYX Rules 11.16 by aligning the liability caps in order to provide consistent member reimbursement requirements for users of the BGM Affiliated Exchanges.⁹

Rule 11.12 currently states that, except as provided in subsection (d) of the Rule, the Exchange and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Exchange or its use. Exchange Rule 11.16(d) provides a limited exception to its general limitation of liability that allows for the payment of compensation to Members for “losses resulting directly from the malfunction of the Exchange’s physical equipment, devices and/or programming or the negligent acts or omissions of its employees” (“Exchange Systems Issues”), subject to certain conditions. Subsection (d)(1) of Rule 11.12 limits the aggregate limits of all claims made by all Members during a single calendar month to the larger of \$500,000, or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

The Exchange now proposes to renumber subsection (d)(1) of the Rule 11.12 and

⁸ See Securities Exchange Act Release Nos. 73356 (October 15, 2014) (SR-BATS-2014-045); and 73357 (October 15, 2014) (SR-BYX-2014-027). In sum, BATS and BYX amended Rule 11.16 to align with Exchange Rule 11.12 to provide members with additional time within which to submit a written claim for compensation for “losses resulting directly from the malfunction of the Exchange’s physical equipment, devices and/or programming or the negligent acts or omissions of its employees” and add a new paragraph (g) to Rule 11.16 to permit the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through its affiliated routing broker-dealer, BATS Trading, Inc., to Trading Centers where such losses are claimed by the Member to have resulted directly from a malfunction of the physical equipment, devices and/or programming, or the negligent acts or omissions of the employees, of such Trading Centers.

⁹ The Exchange understands that EDGX is to file a proposed rule change with the Commission to adopt similar requirements.

adopt new subsections (d)(1) and (2) under Rule 11.12 to harmonize its liability caps with those set forth under existing rules of BATS and BYX.¹⁰ Under the proposed rule change, the Exchange would cap its liability for Exchange Systems Issues under proposed Rule 11.12(d)(1) and (2): (i) to a single Member at the greater of \$100,000 or the amount recovered under any applicable insurance policy on a single trading day; (ii) to all Members at the greater of \$250,000 or the amount recovered under any applicable insurance policy on a single trading day. Current Rule 11.12(d)(1) would be re-numbered as subsection (d)(3) and continue to cap the Exchange's liability to all Members at the greater of \$500,000 or the amount recovered under any applicable insurance policy in a single calendar month.¹¹

The Exchange also proposes to amend Rule 11.12(d)(2) to align with the proposed liability caps for a single trading day. Specifically, proposed Rule 11.12(d)(2) would be amended to clarify that, to the extent that all claims resulting from Exchange Systems Issues cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for, then the Exchange proposes to allocate the maximum amount among all such claims arising on a single trading day or during a single calendar month, as applicable, based on the proportion that each such

¹⁰ See supra note 5.

¹¹ The Exchange notes that under renumbered Rule 11.12(g)(4) any compensation paid to Members from reimbursement recovered from a Trading Center for a routed order will not count against the Exchange's liability limits set forth in Rule 11.12(d), nor any applicable insurance maintained by the Exchange. Securities Exchange Act Release Nos. 71061 (December 12, 2013), 78 FR 76685 (December 18, 2013) (SR-EDGA-2013-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.12, Limitations of Liability); and 71062 (December 12, 2013), 78 FR 76693 (December 18, 2013) (SR-EDGX-2013-45) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.12, Limitations of Liability).

claim bears to the sum of all such claims. Rule 11.12(d)(2) would also be renumbered as Rule 11.12(e).

The Exchange also proposes to amend Rule 11.12(e)(4) to align with the amended liability caps as well as to renumber other sections within Rule 11.12 to mirror BATS Rule 11.16 and BYX Rule 11.16.

Implementation Date

The Exchange intends to implement the proposed rule change on or about November 6, 2014, which is the anticipated operative date of recently filed BATS and BYX proposed rule changes to align BATS and BYX Rules 11.16 with EDGA and EDGX Rules 11.12(d)(3) and (e).¹² The Exchange will announce the implementation of the proposed rule change via a trading notice to be posted on the Exchange's website.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹³ and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in that it is designed promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposal, in effect, would allow the Exchange to ensure that compensation for a single incident did not exceed the monthly cap of \$500,000, thereby providing [sic] enabling the Exchange to possibly compensate Members for instances on multiple trading days per month subject to Rule 11.12(d)(3). The Exchange believes that the proposed rule change is not designed to permit unfair

¹² See supra note 8.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers or dealers. The proposed rule change is substantially similar to the existing rules of BATS and BYX.¹⁵ The proposed rule change is intended to align the liability caps for Member reimbursements with that currently provided by BATS and BYX in order to provide a consistent rules across the BGM Affiliated Exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGA and EDGX. The proposed rule change would provide greater harmonization between EDGX and EDGA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The proposed rule change would not impose any burden on competition. The Exchange believes that the proposed rule changes will not burden intramarket competition because all Members would be subject to the same liability caps for claims resulting from Exchange Systems Issues. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among Exchange and BATS and BYX rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members of the BGM Affiliated Exchanges.

¹⁵ See supra note 5.

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 Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ 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 Act and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may 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. Waiver of the 30-day operative delay would provide

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 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.

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

consistent rules across the BGM Affiliated Exchanges which will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGX, BATS and BYX. In addition, the Commission notes that the proposed rule change is identical to the existing rules of BATS and BYX. 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.²⁰ The 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

²⁰ 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).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EDGA-2014-24 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- EDGA-2014-24. 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; 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- EDGA-2014-24 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.²¹

Brent J. Fields
Secretary

²¹ 17 CFR 200.30-3(a)(12).