

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76157; File No. SR-EDGA-2015-39)

October 15, 2015

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Rule 3.20, Influencing or Rewarding Employees of Others, Concerning Gifts and Gratuities in Relation to the Business of the Employer of the Recipient

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 September 30, 2015, 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 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 adopt Rule 3.20 to conform to the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) for purposes of an agreement between the Exchange and FINRA pursuant to Rule 17d-2 under the Act.⁵ The Exchange

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 17 CFR 240.17d-2.

also proposes to adopt Rule 3.20 to conform to the rules of BATS Exchange, Inc. (“BZX”) and BATS Y-Exchange, Inc. (“BYX”).⁶

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

Pursuant to Rule 17d-2 under the Act,⁷ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules (the “17d-2 Agreement”). The 17d-2 Agreement covers common members of the Exchange and FINRA and allocates to FINRA regulatory responsibility, with respect to common members, for the following: (i) examination of common members of the Exchange and FINRA for compliance with certain federal securities laws, rules and regulations and

⁶ See SR-BATS-2015-79 and SR-BYX-2015-43 (filed September 30, 2015) (Notice of Filing and Immediate Effectiveness to Amend Rule 3.22 to Conform to FINRA Rule 3220).

⁷ 17 CFR 240.17d-2.

rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of common members of the Exchange and FINRA for violations of certain federal securities laws, rules or regulations, or Exchange rules that the Exchange has certified as identical or substantially identical to a FINRA rule; and (iii) enforcement of compliance by common members with certain federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.⁸

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. The Exchange does not currently maintain a rule similar to FINRA Rule 3220 governing a Member's giving of gifts. To conform to comparable FINRA rules for purposes of the 17d-2 Agreement, the Exchange proposes [sic] adopt Rule 3.20, Influencing or Rewarding Employees of Others, that is identical to FINRA Rule 3220. The proposed rule text is also identical to New York Stock Exchange, Inc. ("NYSE") Rule 3220, which has been approved by the Commission.⁹

The Exchange believes that these changes will help to avoid confusion among Members of the Exchange that are also members of FINRA by further aligning the Exchange Rules with FINRA Rule 3220. The proposed adoption of Rule 3.20 is designed to enable the Exchange to incorporate Rule 3.20 into the 17d-2 Agreement,

⁸ See Securities and Exchange Release No. 62078 (May 11, 2010), 75 FR 28078 (May 19, 2010) (approving File No. 4-597).

⁹ See Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25).

further harmonizing regulation of Members that are also members of FINRA. For the avoidance of doubt, Rule 3.20 would equally apply to Exchange-only Members as the Exchange believes it appropriately protects against improprieties that might arise when substantial gifts or monetary payments are given to certain persons. The Exchange will issue a Regulatory Notice to its Members, including Exchange-only Members that may not also be FINRA Members, and those Members registered with FINRA, clarifying that FINRA's interpretive guidance related to FINRA Rule 3220 is considered part of Exchange Rule 3.20, and that all Members are required to regulate their conduct according to Rule 3.20 and the interpretive guidance related to FINRA Rule 3220.¹⁰

As amended, like FINRA Rule 3220(a), proposed paragraph (a) of Rule 3.20 would prevent gifts in excess of \$100.00 per individual per year where the gift or gratuity is in relation to the business of the employee¹¹ of the recipient. A gift of any kind would be considered a gratuity. The Rule would also contain an express exclusion for payments made pursuant to bona fide, written employment contracts. Specifically, like FINRA Rule 3220(b), proposed paragraph (b) of Rule 3.20 would state that the rule would not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) of the Rule, provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement

¹⁰ See, e.g., FINRA's interpretative guidance concerning business entertainment expenses, including a June 24, 1999, Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. This interpretative letter and other interpretive guidance concerning gifts and gratuities expenses are currently available at FINRA's web site.

¹¹ The Commission notes that both FINRA Rule 3220 and proposed EDGA Rule 3.20 limit gifts and gratuities in relation to the employer of the recipient, rather than those in relation to the "employee" of the recipient as stated above.

between the member and the person who is to be employed to perform such services. Proposed paragraph (c) would require such agreement to include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

The Rule would also require each Member to maintain a separate record of all gifts or gratuities. Like FINRA Rule 3220(c), proposed paragraph (c) of Rule 3.20 would require a separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in proposed paragraph (b) of Rule 3.20 and any employment compensation paid as a result thereof shall be retained by the member for the period specified by Exchange Act Rule 17a-4.¹²

In early 2014, 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 BZX and the BYX (together with BZX, EDGA and EDGX, the “BGM Affiliated Exchanges”).¹³ In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposed text of Rule 3.20 is also identical to recent rule changes filed with the Commission by BZX and BYX to adopt identical rule text to that proposed herein and FINRA Rule 3220. This proposed rule change would enable the Exchange to adopt rules that correspond to rules of BYX and BZX and provide a consistent rule set across each of

¹² 17 CFR 240.17a-4.

¹³ See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43; SR-EDGA-2013-34).

the BGM Affiliated Exchanges.¹⁴

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the Exchange's rules 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will further these requirements by providing greater harmonization between Exchange and FINRA 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.

In addition, the proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. 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. Similarly, the Exchange also believes that, by

¹⁴ The Exchange notes that EDGX intends to file an identical proposal with the Commission to adopt Rule 3.20, Influencing or Rewarding Employees of Others.

¹⁵ 15 U.S.C. 78f(b)(5).

harmonizing the rules across each BGM Affiliated Exchange, the proposal will enhance the Exchange's ability to fairly and efficiently regulate its Members, meaning that the proposed rule change would promote just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.¹⁶

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement. In addition, allowing the Exchange to implement substantively identical rules that apply to all members of the BGM Affiliated Exchanges across each of the BGM Affiliated Exchanges does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BZX, BYX, and EDGA rules of similar purpose.

(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 designated this rule filing as non-controversial under Section

¹⁶ Id.

19(b)(3)(A) of the Act¹⁷ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁸ The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization 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 may summarily 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 proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 C.F.R. 240.19b-4.

- 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 No. SR-EDGA-2015-39 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 No. SR-EDGA-2015-39. 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 am and 3:00 pm. 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 No. SR-EDGA-2015-39 and should be submitted on or before [Insert 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).