

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2013 - * 024 Amendment No. (req. for Amendments *)	
Filing by BATS Exchange Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934		
Section 806(e)(1) <input type="checkbox"/>		Section 806(e)(2) <input type="checkbox"/>		Section 3C(b)(2) <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description					
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).					
<input type="text" value="Proposal to amend the bylaws of BATS Exchange, Inc."/>					
Contact Information					
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.					
First Name * Anders		Last Name * Franzon			
Title * VP, Associate General Counsel					
E-mail * afranzon@bats.com					
Telephone * (913) 815-7154		Fax (913) 815-7119			
Signature					
Pursuant to the requirements of the Securities Exchange Act of 1934,					
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.					
(Title *)					
Date 04/29/2013		VP, Associate General Counsel			
By Anders Franzon		<input type="text"/>			
(Name *)					
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.					
<input type="button" value="Persona Not Validated - 1364234628553"/>					

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend the by-laws of the Exchange.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule filing on April 24, 2013. The Board of Directors of the Exchange approved the amendments to the by-laws on April 24, 2013, and the sole stockholder of the Exchange, BATS Global Markets, Inc., approved the amendments to the by-laws on April 25, 2013. No other action is necessary for the filing of the rule proposal.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

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

(a) Purpose

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4.

The Exchange intends to amend and restate its Amended and Restated By-Laws (the “Current By-Laws”) and adopt these changes as its Second Amended and Restated By-Laws (the “New By-Laws”).

The amendments to the Current By-Laws include: (i) providing that the Board of Directors will consist of four (4) or more directors, with the board fixing the actual number of directors from time to time by resolution of the Board of Directors rather than fixing the number of directors in by-laws; and (ii) clarifying the procedures for filling vacancies on the Board of Directors, including as it relates to filling vacancies on the board resulting from newly created directorships resulting from any increase in the number of directors. The amendments to the Current By-Laws will provide greater flexibility to the Board of Directors of the Exchange by permitting the board to increase or decrease the size of the board without the need to further amend the by-laws, but in all cases subject to the compositional requirements of the board set forth in the by-laws. The amendments to the Current By-Laws would also (i) clarify the procedures for filling vacancies for the Member Representative Director position, and (ii) add a new requirement that the processes for filling any director vacancies apply to vacancies created as a result of an increase in the size of the board. The Exchange is not proposing to amend any of the compositional requirements of the board set forth in the by-laws. Thus, any vacancies filled pursuant to the New By-Laws would be required to continue to comply with these requirements.

Number of Directors

Article III, Section 2(a) of the Current By-Laws fixes the number of directors of the Exchange at ten (10) directors. Article III, Section 2(a) of the New By-Laws would

amend Article III, Section 2(a) to state that the Board of Directors of the Exchange shall consist of four (4) or more members, the number thereof to be determined from time to time by resolution of the Board of Directors, subject to the compositional requirements of the board set forth in Article III, Section 2(b). As a result of these compositional requirements, the board must, at a minimum, be comprised of at least four (4) directors. The Current By-Laws and the New By-Laws require that the Board of Directors consist of the following: (i) one (1) director who is the Chief Executive Officer of the Company; (ii) representation by Member Representative Directors of at least twenty percent (20%) of the board;³ and (iii) representation by Non-Industry Directors (including at least one (1) Independent Director) that equals or exceeds the sum of the number of Industry Directors and Member Representative Directors. Under the Current By-Laws and the New By-Laws, the Chief Executive Officer is considered to be an Industry Director. With the Member Representative Director requirement of twenty percent (20%), the board must include at least one (1) Member Representative Director. Thus, the sum of the number of Industry Directors and Member Representative Directors would equal two (2) directors. As such, the board must also be comprised of at least two (2) Non-Industry Directors, bringing the total minimum size of the board to four (4) directors.

The New By-Laws will provide the board with the flexibility to increase or decrease the size of the board by resolution, rather than amending the by-laws each time

³ Because the number of Member Representative Directors must be at least twenty percent (20%) of the board, it is required under the Current By-Laws and the New By-Laws that if twenty percent (20%) of the directors then serving on the board is not a whole number, such number of Member Representative Directors must be rounded up to the next whole number.

the board seeks to increase or decrease the size of the board. The New By-Laws would continue to require that the Board of Directors meet the compositional requirements of Article III, Section 2(b).

Member Representative Director Vacancies

A Member Representative Director is defined in relevant part in Article I of the Current By-Laws as a Director “elected by the stockholders after having been nominated by the Member Nominating Committee⁴ or by an Exchange Member pursuant to these By-Laws.” Article III, Section 4 of the Current By-Laws in turn specifies the precise process the Member Nominating Committee is required to follow with the respect to the election and nomination of Member Representative Directors. Article III, Section 4(c) of the Current By-Laws specifies that the Member Representative Director nomination and election process includes the following requirements for member participation:

Not later than sixty (60) days prior to the date announced as the date for the annual meeting of stockholders, the Member Nominating Committee shall report to the Nominating Committee and the Secretary the initial nominees for Member Representative Director positions on the Board that have been approved and submitted by the Member Nominating Committee. The Secretary shall promptly notify Exchange Members of those initial nominees. Exchange Members may identify other candidates (“Petition Candidates” for purposes of this Section 4) for the Member

⁴ See Article VI, Section 3 of the Current By-Laws for a detailed description of the Member Nominating Committee and its responsibilities.

Representative Director positions by delivering to the Secretary, at least thirty-five (35) days before the date announced as the date for the annual meeting of stockholders (the “Record Date” for purposes of this Section 4), a written petition, which shall designate the candidate by name and office and shall be signed by Executive Representatives of ten percent (10%) or more of the Exchange Members. An Exchange Member may endorse as many candidates as there are Member Representative Director positions to be filled. No Exchange Member, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate, and any signatures of such Exchange Member, together with its affiliates, in excess of the fifty percent (50%) limitation shall be disregarded.

As distinguished from the nomination and election of directors as part of the Exchange’s annual stockholders meeting, Article III, Section 6 of the Current By-Laws specifies the procedures for filling vacancies on the board when a director position becomes vacant prior to the election of a successor at the end of such director’s term, whether because of death, disability, disqualification, removal, or resignation. Under these circumstances, the Nominating Committee⁵ must nominate, and the stockholders must elect, a person satisfying the classification for the directorship in compliance with the board compositional requirements of Article III, Section 2(b) of the Current By-Laws

⁵ See Article VI, Section 2 of the Current By-Laws for a detailed description of the Nominating Committee and its responsibilities.

to fill such vacancy; provided, however, that if the remaining term of office of a Member Representative Director at the time of such director's termination is not more than six (6) months, during the period of vacancy the board is not deemed to be in violation of the board compositional requirements because of such vacancy.

The Current By-Laws do not separately specify a process for filling a Member Representative Director position that becomes vacant prior to the election of a successor at the end such director's term. This lack of specificity has led to some confusion regarding the exact process to follow. In particular, the Current By-Laws would appear to require that a Member Representative Director vacancy be filled by the Nominating Committee; however, such a requirement would conflict with the Current By-Laws' definition of a Member Representative Director, which requires in all cases that such person be nominated by the Member Nominating Committee or by an Exchange Member. The Exchange intended that its Current By-Laws would require that the Member Nominating Committee nominate one or more candidates to fill Member Representative Director vacancies, which is consistent with precedent from other exchanges.⁶

As such, Article III, Section 6(a) and (b) of the New By-Laws would clarify the procedures for filling Member Representative Director vacancies on the board to require that the Member Nominating Committee shall either (i) recommend an individual to the

⁶ See Article III, Section 3.5(b) of the Sixth Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated; see also Article II, Section 3 of the By-Laws of the NASDAQ Stock Market LLC; see also Article II, Section 2.8(b) of the By-Laws of Miami International Securities Exchange, LLC; see also Article III, Section 6(b) of the Amended and Restated Bylaws of EDGA Exchange, Inc and Article III, Section 6(b) of the Amended and Restated Bylaws of EDGX Exchange, Inc.

stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy. In addition, Article III, Section 6(a) and (b) of the New By-Laws would add the requirement that the process for filling vacancies described therein shall be followed in the circumstance where such vacancy is created as a result of an increase in the size of the board. Generally, if the board has determined to increase the size of the board, it is creating the new directorship seat(s) because it has identified a qualified candidate(s) who would improve the overall quality of the board. Under these circumstances, time is of the essence and waiting to elect a director(s) to fill a newly created directorship seat(s) at the next scheduled annual stockholder meeting is not in the best interests of the Exchange or its stockholders. As such, it's necessary that the New By-Laws include a more streamlined process to fill any vacancies created by increasing the size of the board. In the case of a director filling a vacancy not resulting from a newly-created directorship, the new director would serve until the expiration of the remaining term. In the case of a director filling a vacancy resulting from a newly-created directorship, the new director would serve until the expiration of such person's designated term. In all cases, however, if the remaining term of office of a director at the time of such director's vacancy is not more than six (6) months, during the period of vacancy the board shall not be deemed to be in violation of Article III, Section 2(b) because of such vacancy. Under the Current By-Laws, this six-month grace period applies only to Member Representative Director vacancies. Under the New By-Laws,

this six-month grace period would be expanded to apply to any director vacancy, which is consistent with precedent from other exchanges.⁷ Applying the six-month grace period to filling any director vacancy, and not just a Member Representative Director vacancy, would avoid the board being in violation of the board compositional requirements of the by-laws during such vacancy. This, in turn, would be less disruptive to the director election process by permitting the vacancy to be filled at the next scheduled annual stockholder meeting, rather than through an earlier-held special stockholder meeting.

(b) Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and 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.⁸ In particular, (i) Article III, Section 2(a) of the proposed New By-Laws, which permits the board to increase or decrease the size of the board by resolution, and (ii) Article III, Section 6(a) and (b) of the proposed New By-Laws, which clarify the procedures for filling vacancies on the board as described above, are consistent with Section 6(b)(1) of the Act, because they provide the board with measured flexibility in the operation of the Exchange and clarify the method by which vacancies on the board may be filled by stockholders, thereby enabling the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by

⁷ See Article III, Section 6(a) of the Amended and Restated Bylaws of EDGA Exchange, Inc and Article III, Section 6(a) of the Amended and Restated Bylaws of EDGX Exchange, Inc.; see also Article III, Section 2(b) of the By-Laws of the NASDAQ Stock Market LLC.

⁸ 15 U.S.C. 78f(b).

its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. While under the proposed New By-Laws the method of determining the size of the board would change and the procedures for filling vacancies on the board would be explained in greater detail, the Exchange is not proposing to amend any of the compositional requirements of the board set forth in the Current By-Laws. As such, the board would be required to continue to comply with these requirements. The Exchange further believes that the proposed changes will provide greater flexibility to the Exchange in populating a Board of Directors that includes directors with relevant expertise, while continuing to ensure that the existing compositional requirements of the Exchange are met. Finally, the Exchange again notes that the New By-Laws, as proposed to be amended, are similar to the by-laws of other exchanges with respect to the size of the board as well as the filling of vacancies.⁹

4. 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. Specifically, the Exchange believes that the New By-Laws do not directly affect competition between the Exchange and others that provide the same goods and services as the Exchange, since they do not affect the availability or pricing of such goods and services. To the extent that the proposed changes to the by-laws may be construed to have any bearing on competition, the Exchange believes that the changes will promote

⁹ See supra note 6.

competition between the Exchange and other national securities exchanges that do not have a restrictive number of directors set forth in their respective by-laws and permit vacancies on the board to be filled using similar procedures.¹⁰

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

The Exchange has not solicited or received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

Not applicable.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission.

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibits 2 – 4: Not applicable.

¹⁰ Id.

Exhibit 5: Text of Proposed Amendment to Amended and Restated By-Laws of BATS Exchange, Inc.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2013-024)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend and Restate the Amended and Restated By-Laws of BATS Exchange, Inc.

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 April 29, 2013, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 filed a proposal to amend the by-laws of the Exchange.

The text of the proposed rule change is available at the Exchange’s website at <http://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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 intends to amend and restate its Amended and Restated By-Laws (the "Current By-Laws") and adopt these changes as its Second Amended and Restated By-Laws (the "New By-Laws").

The amendments to the Current By-Laws include: (i) providing that the Board of Directors will consist of four (4) or more directors, with the board fixing the actual number of directors from time to time by resolution of the Board of Directors rather than fixing the number of directors in by-laws; and (ii) clarifying the procedures for filling vacancies on the Board of Directors, including as it relates to filling vacancies on the board resulting from newly created directorships resulting from any increase in the number of directors. The amendments to the Current By-Laws will provide greater flexibility to the Board of Directors of the Exchange by permitting the board to increase or decrease the size of the board without the need to further amend the by-laws, but in all cases subject to the compositional requirements of the board set forth in the by-laws. The amendments to the Current By-Laws would also (i) clarify the procedures for filling vacancies for the Member Representative Director position, and (ii) add a new requirement that the processes for filling any director vacancies apply to vacancies created as a result of an increase in the size of the board. The Exchange is not proposing to amend any of the compositional requirements of the board set forth in the by-laws.

Thus, any vacancies filled pursuant to the New By-Laws would be required to continue to comply with these requirements.

Number of Directors

Article III, Section 2(a) of the Current By-Laws fixes the number of directors of the Exchange at ten (10) directors. Article III, Section 2(a) of the New By-Laws would amend Article III, Section 2(a) to state that the Board of Directors of the Exchange shall consist of four (4) or more members, the number thereof to be determined from time to time by resolution of the Board of Directors, subject to the compositional requirements of the board set forth in Article III, Section 2(b). As a result of these compositional requirements, the board must, at a minimum, be comprised of at least four (4) directors. The Current By-Laws and the New By-Laws require that the Board of Directors consist of the following: (i) one (1) director who is the Chief Executive Officer of the Company; (ii) representation by Member Representative Directors of at least twenty percent (20%) of the board;³ and (iii) representation by Non-Industry Directors (including at least one (1) Independent Director) that equals or exceeds the sum of the number of Industry Directors and Member Representative Directors. Under the Current By-Laws and the New By-Laws, the Chief Executive Officer is considered to be an Industry Director. With the Member Representative Director requirement of twenty percent (20%), the board must include at least one (1) Member Representative Director. Thus, the sum of the number of Industry Directors and Member Representative Directors would equal two

³ Because the number of Member Representative Directors must be at least twenty percent (20%) of the board, it is required under the Current By-Laws and the New By-Laws that if twenty percent (20%) of the directors then serving on the board is not a whole number, such number of Member Representative Directors must be rounded up to the next whole number.

(2) directors. As such, the board must also be comprised of at least two (2) Non-Industry Directors, bringing the total minimum size of the board to four (4) directors.

The New By-Laws will provide the board with the flexibility to increase or decrease the size of the board by resolution, rather than amending the by-laws each time the board seeks to increase or decrease the size of the board. The New By-Laws would continue to require that the Board of Directors meet the compositional requirements of Article III, Section 2(b).

Member Representative Director Vacancies

A Member Representative Director is defined in relevant part in Article I of the Current By-Laws as a Director “elected by the stockholders after having been nominated by the Member Nominating Committee⁴ or by an Exchange Member pursuant to these By-Laws.” Article III, Section 4 of the Current By-Laws in turn specifies the precise process the Member Nominating Committee is required to follow with the respect to the election and nomination of Member Representative Directors. Article III, Section 4(c) of the Current By-Laws specifies that the Member Representative Director nomination and election process includes the following requirements for member participation:

Not later than sixty (60) days prior to the date announced as the date for the annual meeting of stockholders, the Member Nominating Committee shall report to the Nominating Committee and the Secretary the initial nominees for Member Representative Director positions on the Board that have been approved and submitted by the Member Nominating

⁴ See Article VI, Section 3 of the Current By-Laws for a detailed description of the Member Nominating Committee and its responsibilities.

Committee. The Secretary shall promptly notify Exchange Members of those initial nominees. Exchange Members may identify other candidates (“Petition Candidates” for purposes of this Section 4) for the Member Representative Director positions by delivering to the Secretary, at least thirty-five (35) days before the date announced as the date for the annual meeting of stockholders (the “Record Date” for purposes of this Section 4), a written petition, which shall designate the candidate by name and office and shall be signed by Executive Representatives of ten percent (10%) or more of the Exchange Members. An Exchange Member may endorse as many candidates as there are Member Representative Director positions to be filled. No Exchange Member, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate, and any signatures of such Exchange Member, together with its affiliates, in excess of the fifty percent (50%) limitation shall be disregarded.

As distinguished from the nomination and election of directors as part of the Exchange’s annual stockholders meeting, Article III, Section 6 of the Current By-Laws specifies the procedures for filling vacancies on the board when a director position becomes vacant prior to the election of a successor at the end of such director’s term, whether because of death, disability, disqualification, removal, or resignation. Under these circumstances, the Nominating Committee⁵ must nominate, and the stockholders

⁵ See Article VI, Section 2 of the Current By-Laws for a detailed description of the Nominating Committee and its responsibilities.

must elect, a person satisfying the classification for the directorship in compliance with the board compositional requirements of Article III, Section 2(b) of the Current By-Laws to fill such vacancy; provided, however, that if the remaining term of office of a Member Representative Director at the time of such director's termination is not more than six (6) months, during the period of vacancy the board is not deemed to be in violation of the board compositional requirements because of such vacancy.

The Current By-Laws do not separately specify a process for filling a Member Representative Director position that becomes vacant prior to the election of a successor at the end such director's term. This lack of specificity has led to some confusion regarding the exact process to follow. In particular, the Current By-Laws would appear to require that a Member Representative Director vacancy be filled by the Nominating Committee; however, such a requirement would conflict with the Current By-Laws' definition of a Member Representative Director, which requires in all cases that such person be nominated by the Member Nominating Committee or by an Exchange Member. The Exchange intended that its Current By-Laws would require that the Member Nominating Committee nominate one or more candidates to fill Member Representative Director vacancies, which is consistent with precedent from other exchanges.⁶

⁶ See Article III, Section 3.5(b) of the Sixth Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated; see also Article II, Section 3 of the By-Laws of the NASDAQ Stock Market LLC; see also Article II, Section 2.8(b) of the By-Laws of Miami International Securities Exchange, LLC; see also Article III, Section 6(b) of the Amended and Restated Bylaws of EDGA Exchange, Inc and Article III, Section 6(b) of the Amended and Restated Bylaws of EDGX Exchange, Inc.

As such, Article III, Section 6(a) and (b) of the New By-Laws would clarify the procedures for filling Member Representative Director vacancies on the board to require that the Member Nominating Committee shall either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy. In addition, Article III, Section 6(a) and (b) of the New By-Laws would add the requirement that the process for filling vacancies described therein shall be followed in the circumstance where such vacancy is created as a result of an increase in the size of the board. Generally, if the board has determined to increase the size of the board, it is creating the new directorship seat(s) because it has identified a qualified candidate(s) who would improve the overall quality of the board. Under these circumstances, time is of the essence and waiting to elect a director(s) to fill a newly created directorship seat(s) at the next scheduled annual stockholder meeting is not in the best interests of the Exchange or its stockholders. As such, it's necessary that the New By-Laws include a more streamlined process to fill any vacancies created by increasing the size of the board. In the case of a director filling a vacancy not resulting from a newly-created directorship, the new director would serve until the expiration of the remaining term. In the case of a director filling a vacancy resulting from a newly-created directorship, the new director would serve until the expiration of such person's designated term. In all cases, however, if the remaining term of office of a director at the time of such director's vacancy is not more than six (6) months, during the period of vacancy the board shall not be deemed to be in violation of Article III, Section 2(b) because of such vacancy. Under the Current By-Laws, this six-month grace period

applies only to Member Representative Director vacancies. Under the New By-Laws, this six-month grace period would be expanded to apply to any director vacancy, which is consistent with precedent from other exchanges.⁷ Applying the six-month grace period to filling any director vacancy, and not just a Member Representative Director vacancy, would avoid the board being in violation of the board compositional requirements of the by-laws during such vacancy. This, in turn, would be less disruptive to the director election process by permitting the vacancy to be filled at the next scheduled annual stockholder meeting, rather than through an earlier-held special stockholder meeting.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and 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.⁸ In particular, (i) Article III, Section 2(a) of the proposed New By-Laws, which permits the board to increase or decrease the size of the board by resolution, and (ii) Article III, Section 6(a) and (b) of the proposed New By-Laws, which clarify the procedures for filling vacancies on the board as described above, are consistent with Section 6(b)(1) of the Act, because they provide the board with measured flexibility in the operation of the Exchange and clarify the method by which vacancies on the board may be filled by stockholders, thereby enabling the Exchange to be so organized as to have the capacity to

⁷ See Article III, Section 6(a) of the Amended and Restated Bylaws of EDGA Exchange, Inc and Article III, Section 6(a) of the Amended and Restated Bylaws of EDGX Exchange, Inc.; see also Article III, Section 2(b) of the By-Laws of the NASDAQ Stock Market LLC.

⁸ 15 U.S.C. 78f(b).

be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. While under the proposed New By-Laws the method of determining the size of the board would change and the procedures for filling vacancies on the board would be explained in greater detail, the Exchange is not proposing to amend any of the compositional requirements of the board set forth in the Current By-Laws. As such, the board would be required to continue to comply with these requirements. The Exchange further believes that the proposed changes will provide greater flexibility to the Exchange in populating a Board of Directors that includes directors with relevant expertise, while continuing to ensure that the existing compositional requirements of the Exchange are met. Finally, the Exchange again notes that the New By-Laws, as proposed to be amended, are similar to the by-laws of other exchanges with respect to the size of the board as well as the filling of vacancies.⁹

(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. Specifically, the Exchange believes that the New By-Laws do not directly affect competition between the Exchange and others that provide the same goods and services as the Exchange, since they do not affect the availability or pricing of such goods and services. To the extent that the proposed changes to the by-laws may be construed to have any bearing on competition, the Exchange believes that the changes will promote

⁹ See supra note 6.

competition between the Exchange and other national securities exchanges that do not have a restrictive number of directors set forth in their respective by-laws and permit vacancies on the board to be filled using similar procedures.¹⁰

(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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change

should be 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:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁰ Id.

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2013-024 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2013-024. 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 changes 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-BATS-2013-024 and should be submitted on or before [_____21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

SECOND AMENDED AND RESTATED
BY-LAWS OF
BATS EXCHANGE, INC.

* * *

ARTICLE III

Board of Directors

* * *

Section 2. Composition of the Board

(a) The [number of Directors of the Company shall be ten (10)] Board of Directors shall consist of four (4) or more Directors, the number thereof to be determined from time to time by resolution of the Board of Directors, subject to the compositional requirements of the Board set forth in Article III, Section 2(b).

* * *

Section 6. Vacancies

(a) Whenever any Director position, other than a Member Representative Director position, becomes vacant prior to the election of a successor at the end of such Director's term, whether because of death, disability, disqualification, removal, or resignation, and whenever any newly-created Director position, other than a Member Representative Director position, becomes available because of an increase in the number of Directors, the Nominating Committee shall nominate, and stockholders shall elect, a person satisfying the classification (Industry, Non-Industry, or Independent Director), if applicable, for the directorship to fill such vacancy until the expiration of the remaining term or to fill such newly-created Director position until the expiration of such position's designated term[as provided in Article III, Section 2(b) to fill such vacancy]; *provided,* however, that if the remaining term of office of a [Member Representative] Director at the time of such Director's [termination] vacancy is not more than six (6) months, during the period of vacancy the Board shall not be deemed to be in violation of Article III, Section 2(b) by virtue of such vacancy.

(b) Whenever any Member Representative Director position becomes vacant prior to the election of a successor at the end of such Member Representative Director's term, whether because of death, disability, disqualification, removal, or resignation, and whenever any newly-created Member Representative Director position becomes available because of an increase in the

number of Directors, then the stockholders shall follow the procedures set forth in this Section 6(b). In such event, the Member Nominating Committee shall either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy. A Member Representative Director elected pursuant to this Section 6(b) shall serve until the expiration of the remaining term or until the expiration of such position's designated term; *provided*, however, that if the remaining term of office of a Member Representative Director at the time of such Director's vacancy is not more than six (6) months, during the period of vacancy the Board shall not be deemed to be in violation of Article III, Section 2(b) by virtue of such vacancy.

* * *