

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="41"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2014"/> - * <input type="text" value="043"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<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 checked="" 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"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed to adopt a retail attribution program under new Rule 11.24.

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 * <input type="text" value="Christopher"/>	Last Name * <input type="text" value="Solgan"/>
Title * <input type="text" value="Regulatory Counsel"/>	
E-mail * <input type="text" value="csolgan@bats.com"/>	
Telephone * <input type="text" value="(201) 942-8321"/>	Fax <input type="text"/>

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 <input type="text" value="09/18/2014"/>	<input type="text" value="Regulatory Counsel"/>
By <input type="text" value="Christopher Solgan"/>	<input type="text" value=""/>
(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.

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

(a) 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 proposed rule change to adopt a retail attribution program under new Rule 11.24. Under the program, Members³ will be able to designate that the orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange’s proprietary data feeds.⁴ The proposed rule change is substantially similar to the existing rules of the BATS Y-Exchange, Inc. (“BYX”)⁵ and EDGX Exchange, Inc. (“EDGX”).⁶ The Exchange has designated this proposal as non-controversial and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A “Member” is defined “any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.” BYX Rule 1.5(n).

⁴ The Exchanges proprietary data feeds are set forth under Exchange Rule 11.22.

⁵ See BYX Rule 11.24. Securities Exchange Act Release Nos. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (“RPI Approval Order”) (SR-BYX-2012-019); 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (Approval Order) (SR-BYX-2013-008); 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR-BYX-2014-001) (Notice of Filing and Immediate Effectiveness to Extend the Pilot Period for the Retail Price Improvement Program); and 72730 (July 31, 2014), 79 FR 45857 (SR-BYX-2014-013) (Notice of Filing and Immediate Effectiveness to Amend Rule 11.24(a)(2) to Include Riskless Principal Orders to the Types of Orders that May Qualify as Retail Orders under the Retail Price Improvement Program).

⁶ See Footnote 4 of the Exchange’s Fee Schedule [available at](http://www.directedge.com/Trading/EDGXFeeSchedule.aspx) <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx>; Securities

provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁷ The text of the proposed rule change is attached as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The Exchange submits the proposed rule change pursuant to authority delegated by the Board of Directors of the Exchange on February 11, 2014. Exchange staff will advise the Exchange's Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change and, therefore, the Exchange's internal procedures with respect to the proposed change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Eric Swanson
Executive Vice President and
General Counsel
(913) 815-7000

Chris Solgan
Regulatory Counsel
(201) 942-8321

Exchange Act Release Nos. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 15.1(a) and (c)); Securities Exchange Act Release No. 69378 (April 15, 2013), 78 FR 23617 (April 19, 2013) (SR-EDGX-2013-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders); 69852 (June 25, 2013), 78 FR 39420 (July 1, 2013) (SR-EDGX-2013-20) (Notice of Filing and Immediate Effectiveness to Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders); and 72292 (June 2, 2014), 79 FR 32798 (June 6, 2014) (SR-EDGX-2014-13) (Order Approving Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule to Permit Members to Designate their Retail Orders to be Identified as Retail on the EDGX Book Feed).

⁷ 17 CFR 240.19b-4(f)(6)(iii).

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

(a) Purpose

The Exchange proposes to adopt a retail attribution program under new Rule 11.24. Under the program, Members will be able to designate that the orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds. The proposed rule change is substantially similar to the existing rules of BYX and EDGX.⁸

Earlier this year, the Exchange and its affiliate BATS Y-Exchange, Inc. ("BYX") received approval to effect a merger (the "Merger") of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA Exchange, Inc. ("EDGA", and together with BATS, BYX and EDGX, the "BGM Affiliated Exchanges").⁹ In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by BYX and EDGX in order to provide a consistent technology offering for members of the BGM Affiliated Exchanges.¹⁰

⁸ See supra notes 5 and 6.

⁹ See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

¹⁰ The Exchange anticipates that EDGA will submit a similar proposed rule change in the future to add a definition for "Retail Order" and to permit members to designate that their Retail Orders be identified as Retail on their respective proprietary data feeds.

Both BYX and EDGX¹¹ have established programs in an attempt to attract retail order flow to the Exchange. Under BYX's Retail Price Improvement ("RPI") Program, all exchange members are permitted to submit Retail Price Improvement Orders ("RPI Orders")¹² which are designed to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation ("Protected NBB") or the national best offer that is a Protected Quotation ("Protected NBO", and together with the Protected NBB, the "Protected NBBO").¹³ Under the EDGX program, eligible EDGX members may qualify for a rebate under the Retail Order Tier included in Footnote 4 of the EDGX fee schedule. Both the

¹¹ See supra notes 5 and 6.

¹² A "Retail Price Improvement Order" is defined in BYX Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least \$0.001 and that is identified as such. See Rule 11.24(a)(3).

¹³ The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

BYX and EDGX rules define a Retail Order¹⁴ and provides attestation requirements¹⁵ that Members must complete to send Retail Orders to the Exchange.¹⁶ Under the EDGX program, eligible members may designate also that their Retail Orders be identified as Retail on the EDGX book feed.¹⁷

The Exchange proposes to adopt a retail attribution program under new Rule 11.24. Under the program, Members who satisfy the requirements under proposed Rule 11.24 will be able to designate that their orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds. Specifically, proposed Rule 11.24 would: (i) define a Retail Order and Retail Member Organization ("RMO"); (ii) set forth an RMO's qualification and application requirements; (iii) outline procedures for when an RMO fails to abide by the Retail Order

¹⁴ Both BYX and EDGX define Retail Order (i) an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology. See supra notes 5 and 6.

¹⁵ Both BYX and EDGX require Members to submit a signed written attestation, in a form prescribed by the exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a "Retail Order" comply with the above requirements. See supra notes 5 and 6.

¹⁶ The attestation requirements and definition of Retail Order under Exchange Rule 11.24 are substantially similar to Footnote 4 of the EDGX fee schedule. See supra notes 5 and 6.

¹⁷ See Footnote 4 of the EDGX's fee schedule available at <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx>. To align functionality with EDGX, BYX has also recently submitted a proposed rule change to the Commission to add paragraph (i) to Rule 11.24 to permit Members to designate that their Retail Orders submitted under the Exchange's RPI Program be identified as Retail on BYX's proprietary data feeds, rather than by their MPID. See SR-BYX-2014-024 (filed September 17, 2014).

requirements; and (iv) outline the procedures under which a Member may appeal the Exchange's decision to disapprove it or disqualify it as an RMO. The proposed rule change is substantially similar to the existing functionality and requirements on the BYX¹⁸ and EDGX.¹⁹ However, unlike the BYX and EDGX programs, the proposed rule change would not include any rebate provision or mechanics for price improvement, as described above. The proposed rule change would only allow an RMO to designate that their Retail Orders be identified as Retail on the Exchange's proprietary data feeds,²⁰ as is currently provided for by EDGX.

Definitions

The Exchange proposes to adopt the following definitions under proposed Rule 11.24(a). First, the term "Retail Member Organization" would be defined as a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders. The proposed definition of Retail Member Organization is identical to that contained in BYX Rule 11.24(a)(1).²¹

Second, the term "Retail Order" would be defined as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does

¹⁸ See supra note 5.

¹⁹ See supra note 6.

²⁰ The Exchange will submit a proposed rule change to the Commission should it decide in the future to expand the program to include a rebate or price improvement mechanism for Retail Orders.

²¹ See supra note 5.

not originate from a trading algorithm or any other computerized methodology. The proposed definition of Retail Order is identical to that contained in BYX Rule 11.24(a)(1) and in Footnote 4 of the EDGX fee schedule.²²

Program Requirements and Procedures

The proposed rule change would also include qualification standards and a review process identical to BYX Rule 11.24(b). The qualification and review standards under proposed Rule 11.24(b) are designed to ensure that Members are properly qualified as an RMO and only attribute as Retail those orders that meet the definition of Retail Orders under proposed Rule 11.24(a)(1) described above. Like on BYX, under proposed Rule 11.24(b), any Member could qualify as an RMO if it conducts a retail business or handles Retail Orders on behalf of another broker-dealer. Any Member that wishes to obtain RMO status would be required to submit: (1) an application form; (2) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted by the Member as Retail Orders would meet the qualifications for such orders under proposed Rule 11.24(a)(1); and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.²³

Like on BYX and EDGX, an RMO would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and

²² See supra notes 5 and 6.

²³ For example, a prospective RMO could be required to provide sample marketing literature, website screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

procedures must require the Member to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.²⁴

If the Exchange disapproves the application, the Exchange would provide a written notice to the Member. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 11.24(d), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. The disapproval process is identical to BYX Rule 11.24(b)(4). An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Failure of RMO to Abide by Retail Order Requirements

Proposed Rule 11.24(c) addresses an RMO's failure to abide by Retail Order requirements, which are identical to existing BYX Rule 11.24(c). If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its

²⁴ The Exchange or another self-regulatory organization on behalf of the Exchange will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a Member from its status as an RMO. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the Member. A disqualified RMO could appeal the disqualification as provided in proposed Rule 11.24(d) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.

Appeal of Disapproval or Disqualification

Proposed Rule 11.24(d) provides appeal rights to Members, which are also identical to existing BYX Rule 11.24(d). If a Member disputes the Exchange's decision to disapprove it as an RMO under Rule 11.24(b) or disqualify it under Rule 11.24(c), such Member ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Attribution Panel (the "Panel") review the decision to determine if it was correct.

The Panel would consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Chief Information Officer ("CIO"). The Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The Panel could overturn or modify an action taken by the Exchange and all determinations by the Panel would constitute final action by the Exchange on the matter at issue.

Attribution

Currently, Members may elect that their display-eligible orders entered into the

Exchange utilize Attributable Orders²⁵ to include their market participant identifier (“MPID”) with their published quotations on the Exchange’s proprietary data feeds. Under the EDGX program, eligible members may designate that their Retail Orders be identified as Retail on the EDGX book feed, rather than by their MPID.²⁶ To align functionality with EDGX, the Exchange now proposes Rule 11.24(i) to permit Members to designate that their Retail Orders submitted under the Exchange’s RPI Program be identified as Retail on the Exchange’s proprietary data feeds.²⁷ Members will still be permitted to designate their Retail Orders by their MPID if they do not choose this optional functionality. The Exchange proposes to allow Members to designate their orders as Retail on an order-by-order basis or by establishing a port setting such that all orders submitted through a specific order entry port are designated as Retail.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and

²⁵ An Attributable Order is defined as, “[a]n order that is designated for display (price and size) including the User’s market participant identifier (‘MPID’).” See Rule 11.9(c)(14).

²⁶ See supra note 6.

²⁷ A Member’s decision on whether to identify their Retail Order as Retail under the proposed rule change will not impact that Member’s eligibility to qualify as a Retail Member Organization under Rule 11.24.

²⁸ 15 U.S.C. 78f.

²⁹ 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for increased execution opportunities to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.³⁰ The Exchange believes that it is appropriate to create a such a retail attribution program to bring more retail order flow to a public market.

The proposed rule change is substantially similar to the existing functionality and rules of the BYX³¹ and EDGX.³² The Exchange also notes that the Commission approved a similar programs by NYSE and NYSE MKT.³³ The proposed retail

³⁰ See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission’s website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

³¹ See supra note 5.

³² See supra note 6.

³³ See New York Stock Exchange, Inc.’s (“NYSE”) Rule 107C. See also NYSE MKT LLC (“NYSE MKT”) Rule 107C; NYSE Arca, Inc. (“NYSE Arca”) Rule 7.44. Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (the “RLP Approval Order”). In conjunction with the approval of the NYSE Retail Liquidity Program, a nearly identical program was proposed and approved to operate on NYSE MKT LLC (formerly, the American Stock Exchange). For ease of reference, the comparisons made in this section only refer to NYSE Rule 107C, but apply equally to NYSE MKT Rule 107C. The Exchange notes that the NYSE and NYSE MKT programs do not allow members to elect that their retail orders be identified as Retail on the exchange’s proprietary data feeds.

attribution program would contain identical definitions, standards and qualification procedures as the BYX, NYSE, and NYSE MKT programs. However, unlike these programs, the proposed rule change would not include any rebate provision or mechanics for price improvement, as described above. Like the Commission approved for EDGX,³⁴ the proposed rule change would only allow an RMO to designate that their Retail Orders be identified as Retail on the Exchange's proprietary data feeds.

The Exchange believes that the proposal will benefit market participants and help to promote transparency by providing additional information regarding quotations displayed on the Exchange and disseminated via the Exchange's proprietary data feeds. Specifically, any Member who satisfies the requirement under Rule 11.24(b) that wishes to disclose via the Exchange's proprietary data feeds that their order is a Retail Order will be permitted to do so, and such functionality is substantially similar to that currently offered by EDGX.³⁵ The proposal also promotes transparency by disseminating additional order information from Members who may otherwise designate their order as non-attributable, and thereby not include their MPID with their published quote on the Exchange's proprietary data feeds.³⁶ As a result, the proposal will provide Members additional visibility into the types of orders they may interact with when an order is

³⁴ See supra note 6.

³⁵ Id.

³⁶ The Exchange understands that, to date, EDGX has not experienced members who attribute orders by their MPID electing to instead attribute their Retail Orders as Retail on the EDGX book feed. On the contrary, the Exchange understands that EDGX members who previously did not attribute their order have chosen to do so as Retail under the EDGX program. Therefore, the Exchange does not anticipate its Members who currently utilize Attributable Orders to now elect that their Retail Orders be attributed as Retail.

identified as a Retail Order. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage Members who wish to execute against Retail Orders to send additional orders to the Exchange. Therefore, the Exchange believes the increased liquidity would potentially stimulating further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency.

The Exchange also believes its proposed qualification standards and review process under Rule 11.24 promote just and equitable principles and are not unfairly discriminatory because they are designed to ensure that Members are properly qualified as an RMO and only attribute as Retail those orders that meet the definition of Retail Orders under proposed Rule 11.24(a)(1) described above. The qualification process proposed herein by the Exchange is not designed to permit unfair discrimination, but rather ensure that order that are designated to be attributed are Retail are, in fact, order submitted by a retail customer that satisfy the proposed definition of Retail Order. Lastly, the Exchange notes that these qualification and review provisions are identical to those includes in the rules of the BYX, NYSE, and NYSE MKT that have been previously approved by the Commission.³⁷

The Exchange believes that allowing a Member to designate orders as Retail on either an order-by-order or on a port-by-port basis is consistent with the Act for the same reasons as the proposal as a whole is consistent with the Act. The Exchange believes that either method of designation results in the same message being received and processed

³⁷ See supra notes 5 and 33.

by the Exchange's systems, and thus, merely reflects a detail in connection with the implementation of the optional designation.

Lastly, the proposed rule change is also generally intended to add certain system functionality currently offered by EDGX in order to provide a consistent technology offering for the Exchange and EDGX. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Members of the Exchange that are also participants on EDGX. The proposed rule change would also provide Members with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Members.

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

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment will not burden intramarket competition because the ability to designate Retail Orders to be identified as Retail on the Exchange's proprietary data feeds, rather than by their MPID, would be open to all Members that wish to send Retail Orders to the Exchange. The Exchange believes the proposed rule change would increase intermarket competition by identifying orders as Retail via the Exchange's proprietary data feeds would enable the Exchange to better compete with other exchanges that offer similar retail order programs.³⁸ The Exchange believes that the amendment, by increasing the amount of disseminated information

³⁸ See supra note 33.

regarding Retail Orders, will increase the level of competition around retail executions resulting in better prices for retail investors.

The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve offering consistent functionality by the BGM Affiliated Exchanges.

5. 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 unsolicited written comments from Members or other interested parties.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)³⁹ of the Act and Rule 19b-4(f)(6)⁴⁰ thereunder. 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

³⁹ 15 U.S.C. 78s(b)(3)(A).

⁴⁰ 17 CFR 240.19b-4(f)(6).

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. The Exchange provided the Commission with 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.⁴¹

As described above, the Exchange notes that the proposed change is directly based on the rules of BYX,⁴² EDGX,⁴³ the NYSE, and NYSE MKT.⁴⁴ Based on the foregoing, the proposed rule change does not present any unique issues not previously considered by the Commission, and the Exchange has accordingly designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act⁴⁵ and paragraph (f)(6) of Rule 19b-4 thereunder.⁴⁶

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. The Exchange believes that waiver of the 30-day operative delay would provide market participants with additional transparency by disseminating

⁴¹ 17 CFR 240.19b-4(f)(6)(iii).

⁴² See supra note 5.

⁴³ See supra note 6.

⁴⁴ See supra note 33.

⁴⁵ 15 U.S.C. 78s(b)(3)(A).

⁴⁶ 17 C.F.R. 240.19b-4(f)(6).

additional order information regarding the types of orders they may interact with when an order is identified as a Retail Order in a timelier manner. Waiver of the 30-day operative delay would also immediately encourage market participants to send additional orders to the Exchange, thereby potentially stimulating further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency. Timely implementation of the proposed rule change would increase intermarket competition by identifying orders as Retail via the Exchange's proprietary data feeds would enable the Exchange to immediately compete with other exchanges that offer similar retail order programs.⁴⁷ The Exchange believes that increasing the amount of disseminated information regarding Retail Orders, will increase the level of competition around retail executions resulting in better prices for retail investors. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to align its functionality across the BATS, BYX and EDGX in a timely manner, thereby simplifying the technology implementation, changes and maintenance by Members of the Exchange that are also participants on BATS. Importantly, waiver of the operative delay is also consistent with the protection of investors and the public interest because it will allow the Exchange to continue to strive towards a complete technology integration of the BGM Affiliated Exchanges, with gradual roll-outs of new functionality to ensure stability of the System. Waiver of the operative delay is, therefore, consistent with the protection of investors and the public interest.

⁴⁷ See supra note 33.

At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily 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.

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

Proposed Rule 11.24(e) is based on Footnote 4 of the EDGX fee schedule.⁴⁸ On both the Exchange and EDGX, a member may designate a Retail Order to be identified as Retail on the proprietary data feeds either on an order-by-order basis or on a port-by-port basis. Unlike EDGX, however, the Exchange would provide Members who make the election on a port-by-port basis the ability to elect that an individual Retail Order sent via that port be identified by its MPID or as non-attributable, rather than as Retail. The Exchange understands that EDGX plans to file proposed rule change with the Commission to align its functionality with that of the Exchange.

The proposed rule change is also based on BYX Rule 11.24(a) thru (d),⁴⁹ Footnote 4 of the EDGX fee schedule,⁵⁰ and NYSE and NYSE MKT Rules 107C.⁵¹ The proposed retail attribution program would contain identical definitions, standards and qualification procedures are the BYX, NYSE, and NYSE MKT programs.⁵² However,

⁴⁸ See supra note 6.

⁴⁹ See supra note 5. The Exchange notes that the proposed rule change includes non-substantive difference from BYX Rules 11.24(a) thru (d) to account for the Exchange proposing to implement a Retail Order Attribution Program as opposed to a Retail Order Price Improvement Program like on BYX.

⁵⁰ See supra note 6.

⁵¹ See supra note 33.

⁵² See supra notes 5 and 33.

unlike these programs, the proposed rule change would not include any mechanics for price improvement, as described above. Proposed Rule 11.24 will also not provide for a rebate program like on EDGX. Nor would the proposed rule change allow for the dissemination of a Retail Liquidity Identifier like the BYX, NYSE, and NYSE MKT programs. The NYSE and NYSE MKT programs also do not allow members to elect that their retail orders be identified as Retail on the exchange's proprietary data feeds.

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 – Form of Notice of Proposed Rule Change for the Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-BATS-2014-043)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to amend Rule 11.24 to Permit Members to Designate their Retail Orders to be Identified as Retail on the Exchange's Proprietary Data Feeds

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 _____, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 proposed rule change to adopt a retail attribution program under new Rule 11.24. Under the program, Members⁵ will be able to designate that 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 A "Member" is defined "any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to

orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds.⁶ The proposed rule change is substantially similar to the existing rules of the BATS Y-Exchange, Inc. ("BYX")⁷ and EDGX Exchange, Inc. ("EDGX").⁸

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.

Section 15 of the Act, and which has been approved by the Exchange." BYX Rule 1.5(n).

⁶ The Exchanges proprietary data feeds are set forth under Exchange Rule 11.22.

⁷ See BYX Rule 11.24. Securities Exchange Act Release Nos. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR-BYX-2012-019); 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (Approval Order) (SR-BYX-2013-008); 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR-BYX-2014-001) (Notice of Filing and Immediate Effectiveness to Extend the Pilot Period for the Retail Price Improvement Program); and 72730 (July 31, 2014), 79 FR 45857 (SR-BYX-2014-013) (Notice of Filing and Immediate Effectiveness to Amend Rule 11.24(a)(2) to Include Riskless Principal Orders to the Types of Orders that May Qualify as Retail Orders under the Retail Price Improvement Program).

⁸ See Footnote 4 of the Exchange's Fee Schedule available at <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx>; Securities Exchange Act Release Nos. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 15.1(a) and (c)); Securities Exchange Act Release No. 69378 (April 15, 2013), 78 FR 23617 (April 19, 2013) (SR-EDGX-2013-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders); 69852 (June 25, 2013), 78 FR 39420 (July 1, 2013) (SR-EDGX-2013-20) (Notice of Filing and Immediate Effectiveness to Amend Footnote 4 of the Exchange's Fee Schedule Regarding Retail Orders); and 72292 (June 2, 2014), 79 FR 32798 (June 6, 2014) (SR-EDGX-2014-13) (Order Approving Proposed Rule Change to Amend Footnote 4 of the Exchange's Fee Schedule to Permit Members to Designate their Retail Orders to be Identified as Retail on the EDGX Book Feed).

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 adopt a retail attribution program under new Rule 11.24. Under the program, Members will be able to designate that the orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds. The proposed rule change is substantially similar to the existing rules of BYX and EDGX.⁹

Earlier this year, the Exchange and its affiliate BATS Y-Exchange, Inc. ("BYX") received approval to effect a merger (the "Merger") of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA Exchange, Inc. ("EDGA", and together with BATS, BYX and EDGX, the "BGM Affiliated Exchanges").¹⁰ In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below

⁹ See supra notes 7 and 8.

¹⁰ See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

is intended to add certain system functionality currently offered by BYX and EDGX in order to provide a consistent technology offering for members of the BGM Affiliated Exchanges.¹¹

Both BYX and EDGX¹² have established programs in an attempt to attract retail order flow to the Exchange. Under BYX's Retail Price Improvement ("RPI") Program, all exchange members are permitted to submit Retail Price Improvement Orders ("RPI Orders")¹³ which are designed to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation ("Protected NBB") or the national best offer that is a Protected Quotation ("Protected NBO", and together with the Protected NBB, the "Protected NBBO").¹⁴ Under the EDGX program, eligible EDGX members may qualify for a rebate

¹¹ The Exchange anticipates that EDGA will submit a similar proposed rule change in the future to add a definition for "Retail Order" and to permit members to designate that their Retail Orders be identified as Retail on their respective proprietary data feeds.

¹² See supra notes 7 and 8.

¹³ A "Retail Price Improvement Order" is defined in BYX Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least \$0.001 and that is identified as such. See Rule 11.24(a)(3).

¹⁴ The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

under the Retail Order Tier included in Footnote 4 of the EDGX fee schedule. Both the BYX and EDGX rules define a Retail Order¹⁵ and provides attestation requirements¹⁶ that Members must complete to send Retail Orders to the Exchange.¹⁷ Under the EDGX program, eligible members may designate also that their Retail Orders be identified as Retail on the EDGX book feed.¹⁸

The Exchange proposes to adopt a retail attribution program under new Rule 11.24. Under the program, Members who satisfy the requirements under proposed Rule 11.24 will be able to designate that their orders they submit to the Exchange on behalf of retail customers be identified as Retail on the Exchange's proprietary data feeds. Specifically, proposed Rule 11.24 would: (i) define a Retail Order and Retail Member Organization ("RMO"); (ii) set forth an RMO's qualification and application requirements; (iii) outline procedures for when an RMO fails to abide by the Retail Order

¹⁵ Both BYX and EDGX define Retail Order (i) an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology. See supra notes 7 and 8.

¹⁶ Both BYX and EDGX require Members to submit a signed written attestation, in a form prescribed by the exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a "Retail Order" comply with the above requirements. See supra notes 7 and 8.

¹⁷ The attestation requirements and definition of Retail Order under Exchange Rule 11.24 are substantially similar to Footnote 4 of the EDGX fee schedule. See supra notes 7 and 8.

¹⁸ See Footnote 4 of the EDGX's fee schedule available at <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx>. To align functionality with EDGX, BYX has also recently submitted a proposed rule change to the Commission to add paragraph (i) to Rule 11.24 to permit Members to designate that their Retail Orders submitted under the Exchange's RPI Program be identified as Retail on BYX's proprietary data feeds, rather than by their MPID. See SR-BYX-2014-024 (filed September 17, 2014).

requirements; and (iv) outline the procedures under which a Member may appeal the Exchange's decision to disapprove it or disqualify it as an RMO. The proposed rule change is substantially similar to the existing functionality and requirements on the BYX¹⁹ and EDGX.²⁰ However, unlike the BYX and EDGX programs, the proposed rule change would not include any rebate provision or mechanics for price improvement, as described above. The proposed rule change would only allow an RMO to designate that their Retail Orders be identified as Retail on the Exchange's proprietary data feeds,²¹ as is currently provided for by EDGX.

Definitions

The Exchange proposes to adopt the following definitions under proposed Rule 11.24(a). First, the term "Retail Member Organization" would be defined as a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders. The proposed definition of Retail Member Organization is identical to that contained in BYX Rule 11.24(a)(1).²²

Second, the term "Retail Order" would be defined as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The

¹⁹ See supra note 7.

²⁰ See supra note 8.

²¹ The Exchange will submit a proposed rule change to the Commission should it decide in the future to expand the program to include a rebate or price improvement mechanism for Retail Orders.

²² See supra note 7.

proposed definition of Retail Order is identical to that contained in BYX Rule 11.24(a)(1) and in Footnote 4 of the EDGX fee schedule.²³

Program Requirements and Procedures

The proposed rule change would also include qualification standards and a review process identical to BYX Rule 11.24(b). The qualification and review standards under proposed Rule 11.24(b) are designed to ensure that Members are properly qualified as an RMO and only attribute as Retail those orders that meet the definition of Retail Orders under proposed Rule 11.24(a)(1) described above. Like on BYX, under proposed Rule 11.24(b), any Member could qualify as an RMO if it conducts a retail business or handles Retail Orders on behalf of another broker-dealer. Any Member that wishes to obtain RMO status would be required to submit: (1) an application form; (2) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted by the Member as Retail Orders would meet the qualifications for such orders under proposed Rule 11.24(a)(1); and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.²⁴

Like on BYX and EDGX, an RMO would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to (i) exercise due diligence before entering a Retail

²³ See supra notes 7 and 8.

²⁴ For example, a prospective RMO could be required to provide sample marketing literature, website screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

Order to assure that entry as a Retail Order is in compliance with the requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.²⁵

If the Exchange disapproves the application, the Exchange would provide a written notice to the Member. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 11.24(d), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. The disapproval process is identical to BYX Rule 11.24(b)(4). An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Failure of RMO to Abide by Retail Order Requirements

Proposed Rule 11.24(c) addresses an RMO's failure to abide by Retail Order requirements, which are identical to existing BYX Rule 11.24(c). If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the

²⁵ The Exchange or another self-regulatory organization on behalf of the Exchange will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

Exchange may disqualify a Member from its status as an RMO. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the Member. A disqualified RMO could appeal the disqualification as provided in proposed Rule 11.24(d) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.

Appeal of Disapproval or Disqualification

Proposed Rule 11.24(d) provides appeal rights to Members, which are also identical to existing BYX Rule 11.24(d). If a Member disputes the Exchange's decision to disapprove it as an RMO under Rule 11.24(b) or disqualify it under Rule 11.24(c), such Member ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Attribution Panel (the "Panel") review the decision to determine if it was correct.

The Panel would consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Chief Information Officer ("CIO"). The Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The Panel could overturn or modify an action taken by the Exchange and all determinations by the Panel would constitute final action by the Exchange on the matter at issue.

Attribution

Currently, Members may elect that their display-eligible orders entered into the Exchange utilize Attributable Orders²⁶ to include their market participant identifier

²⁶ An Attributable Order is defined as, "[a]n order that is designated for display (price and size) including the User's market participant identifier ('MPID')." See Rule 11.9(c)(14).

(“MPID”) with their published quotations on the Exchange’s proprietary data feeds. Under the EDGX program, eligible members may designate that their Retail Orders be identified as Retail on the EDGX book feed, rather than by their MPID.²⁷ To align functionality with EDGX, the Exchange now proposes Rule 11.24(i) to permit Members to designate that their Retail Orders submitted under the Exchange’s RPI Program be identified as Retail on the Exchange’s proprietary data feeds.²⁸ Members will still be permitted to designate their Retail Orders by their MPID if they do not choose this optional functionality. The Exchange proposes to allow Members to designate their orders as Retail on an order-by-order basis or by establishing a port setting such that all orders submitted through a specific order entry port are designated as Retail.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for increased execution opportunities to retail investors.

²⁷ See supra note 8.

²⁸ A Member’s decision on whether to identify their Retail Order as Retail under the proposed rule change will not impact that Member’s eligibility to qualify as a Retail Member Organization under Rule 11.24.

²⁹ 15 U.S.C. 78f.

³⁰ 15 U.S.C. 78f(b)(5).

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.³¹ The Exchange believes that it is appropriate to create a such a retail attribution program to bring more retail order flow to a public market.

The proposed rule change is substantially similar to the existing functionality and rules of the BYX³² and EDGX.³³ The Exchange also notes that the Commission approved a similar programs by NYSE and NYSE MKT.³⁴ The proposed retail attribution program would contain identical definitions, standards and qualification procedures as the BYX, NYSE, and NYSE MKT programs. However, unlike these programs, the proposed rule change would not include any rebate provision or mechanics for price improvement, as described above. Like the Commission approved for EDGX,³⁵

³¹ See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

³² See supra note 7.

³³ See supra note 8.

³⁴ See New York Stock Exchange, Inc.'s ("NYSE") Rule 107C. See also NYSE MKT LLC ("NYSE MKT") Rule 107C; NYSE Arca, Inc. ("NYSE Arca") Rule 7.44. Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (the "RLP Approval Order"). In conjunction with the approval of the NYSE Retail Liquidity Program, a nearly identical program was proposed and approved to operate on NYSE MKT LLC (formerly, the American Stock Exchange). For ease of reference, the comparisons made in this section only refer to NYSE Rule 107C, but apply equally to NYSE MKT Rule 107C. The Exchange notes that the NYSE and NYSE MKT programs do not allow members to elect that their retail orders be identified as Retail on the exchange's proprietary data feeds.

³⁵ See supra note 8.

the proposed rule change would only allow an RMO to designate that their Retail Orders be identified as Retail on the Exchange's proprietary data feeds.

The Exchange believes that the proposal will benefit market participants and help to promote transparency by providing additional information regarding quotations displayed on the Exchange and disseminated via the Exchange's proprietary data feeds. Specifically, any Member who satisfies the requirement under Rule 11.24(b) that wishes to disclose via the Exchange's proprietary data feeds that their order is a Retail Order will be permitted to do so, and such functionality is substantially similar to that currently offered by EDGX.³⁶ The proposal also promotes transparency by disseminating additional order information from Members who may otherwise designate their order as non-attributable, and thereby not include their MPID with their published quote on the Exchange's proprietary data feeds.³⁷ As a result, the proposal will provide Members additional visibility into the types of orders they may interact with when an order is identified as a Retail Order. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage Members who wish to execute against Retail Orders to send additional orders to the Exchange. Therefore, the Exchange believes the increased liquidity would potentially stimulating further price competition for Retail Orders, deepening the Exchange's

³⁶ Id.

³⁷ The Exchange understands that, to date, EDGX has not experienced members who attribute orders by their MPID electing to instead attribute their Retail Orders as Retail on the EDGX book feed. On the contrary, the Exchange understands that EDGX members who previously did not attribute their order have chosen to do so as Retail under the EDGX program. Therefore, the Exchange does not anticipate its Members who currently utilize Attributable Orders to now elect that their Retail Orders be attributed as Retail.

liquidity pool, supporting the quality of price discovery, and promoting market transparency.

The Exchange also believes its proposed qualification standards and review process under Rule 11.24 promote just and equitable principles and are not unfairly discriminatory because they are designed to ensure that Members are properly qualified as an RMO and only attribute as Retail those orders that meet the definition of Retail Orders under proposed Rule 11.24(a)(1) described above. The qualification process proposed herein by the Exchange is not designed to permit unfair discrimination, but rather ensure that order that are designated to be attributed are Retail are, in fact, order submitted by a retail customer that satisfy the proposed definition of Retail Order. Lastly, the Exchange notes that these qualification and review provisions are identical to those includes in the rules of the BYX, NYSE, and NYSE MKT that have been previously approved by the Commission.³⁸

The Exchange believes that allowing a Member to designate orders as Retail on either an order-by-order or on a port-by-port basis is consistent with the Act for the same reasons as the proposal as a whole is consistent with the Act. The Exchange believes that either method of designation results in the same message being received and processed by the Exchange's systems, and thus, merely reflects a detail in connection with the implementation of the optional designation.

Lastly, the proposed rule change is also generally intended to add certain system functionality currently offered by EDGX in order to provide a consistent technology offering for the Exchange and EDGX. A consistent technology offering, in turn, will

³⁸ See supra notes 7 and 34.

simplify the technology implementation, changes and maintenance by Members of the Exchange that are also participants on EDGX. The proposed rule change would also provide Members with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Members.

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

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment will not burden intramarket competition because the ability to designate Retail Orders to be identified as Retail on the Exchange's proprietary data feeds, rather than by their MPID, would be open to all Members that wish to send Retail Orders to the Exchange. The Exchange believes the proposed rule change would increase intermarket competition by identifying orders as Retail via the Exchange's proprietary data feeds would enable the Exchange to better compete with other exchanges that offer similar retail order programs.³⁹ The Exchange believes that the amendment, by increasing the amount of disseminated information regarding Retail Orders, will increase the level of competition around retail executions resulting in better prices for retail investors.

The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed

³⁹ See supra note 34.

rule change will benefit Exchange participants in that it is one of several changes necessary to achieve offering consistent functionality by the BGM Affiliated Exchanges.

(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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁴⁰ of the Act and Rule 19b-4(f)(6)⁴¹ thereunder. 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. The Exchange provided the Commission with 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.⁴²

⁴⁰ 15 U.S.C. 78s(b)(3)(A).

⁴¹ 17 CFR 240.19b-4(f)(6).

⁴² 17 CFR 240.19b-4(f)(6)(iii).

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.

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
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2014-043 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-2014-043. 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-BATS-2014-043 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.⁴³

Kevin M. O'Neill
Deputy Secretary

⁴³ 17 CFR 200.30-3(a)(12).

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

Rules of BATS Exchange, Inc.

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CHAPTER XI. TRADING RULES

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Rule 11.24. Retail Order Attribution Program

(a) Definitions.

(1) Retail Member Organization. A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.

(2) Retail Order. A “Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

(b) Retail Member Organization Qualifications and Application.

(1) To qualify as a Retail Member Organization, a Member must conduct a retail business or handle retail orders on behalf of another broker-dealer.

(2) To become a Retail Member Organization, a Member must submit:

(A) an application form;

(B) supporting documentation, which may include sample marketing literature, website screenshots, other publicly disclosed materials describing the Member’s retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant’s order flow would meet the requirements of the Retail Order definition; and

(C) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under this Rule.

(3) After an applicant submits the application form, supporting documentation, and attestation, the Exchange shall notify the applicant of its decision in writing.

(4) A disapproved applicant may: (A) request an appeal of such disapproval by the Exchange as provided in paragraph (d) below; and/or (B) reapply for Retail Member Organization status 90 days after the disapproval notice is issued by the Exchange.

(5) A Retail Member Organization may voluntarily withdraw from such status at any time by giving written notice to the Exchange.

(6) A Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to: (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If a Retail Member Organization represents Retail Orders from another broker-dealer customer, the Retail Member Organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether its broker-dealer customer's Retail Order flow meets the applicable requirements.

(c) *Failure of RMO to Abide by Retail Order Requirements.*

(1) If a Retail Member Organization designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of this Rule, the Exchange may disqualify a Member from its status as a Retail Member Organization.

(2) *Disqualification Determinations.* The Exchange shall determine if and when a Member is disqualified from its status as a Retail Member Organization. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Member.

(3) *Appeal and/or Reapplication for Retail Member Organization Status.* A Retail Member Organization that is disqualified under this paragraph (c) may: (A) appeal such disqualification as provided in paragraph (d) below; and/or (B) reapply for Retail Member Organization status 90 days after the date of the disqualification notice from the Exchange.

(d) *Appeal of Disapproval or Disqualification.*

(1) If a Member disputes the Exchange's decision to disapprove it under paragraph (b) above or disqualify it under paragraph (c) above, the Member ("appellant") may request, within five business days after notice of the decision is issued

by the Exchange, that the Retail Attribution Panel (the “Panel”) review the decision to determine if it was correct.

(2) The Panel shall consist of the Exchange’s Chief Regulatory Officer (“CRO”), or a designee of the CRO, and two officers of the Exchange designated by the Chief Information Officer (“CIO”).

(3) The Panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

(4) The Panel may overturn or modify an action taken by the Exchange under this Rule. A determination by the RPI Panel shall constitute final action by the Exchange.

(e) Attribution. A Retail Member Organization may designate a Retail Order to be identified as Retail on the proprietary data feeds under Rule 11.22 either on an order-by-order basis or on a port-by-port basis.

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