

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of \*       SECURITIES AND EXCHANGE COMMISSION      File No.\* SR -  - \*   
 WASHINGTON, D.C. 20549      Form 19b-4      Amendment No. (req. for Amendments \*)

Filing by Bats EDGX Exchange, Inc.  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>	<b>Section 19(b)(3)(B) *</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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)	

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 3C(b)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 806(e)(2) *</b>	
<input type="checkbox"/>	

<b>Exhibit 2 Sent As Paper Document</b>	<b>Exhibit 3 Sent As Paper Document</b>
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

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

The Exchange proposes a rule change to EDGX Rule 21.19, Bats Auction Mechanism, as it applies to the equity options platform.

**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 \*       Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*       Fax

**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         
 By      

(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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Bats EDGX Exchange, Inc. (the “Exchange” or “EDGX”) is filing with the Securities and Exchange Commission (“Commission”) a proposal for the Exchange’s equity options platform (“EDGX Options”) concerning a price improvement mechanism operated by EDGX Options, the Bats Auction Mechanism (“BAM” or “BAM Auction”), which was recently approved by the Commission.<sup>3</sup> A specific aspect of BAM is currently operating on a pilot basis (“Pilot”), which is set to expire on January 18, 2017.<sup>4</sup> The Pilot concerns the fact that there is no minimum size requirement for orders to be eligible for a BAM Auction, as described below. The Exchange seeks to make the Pilot permanent but does not propose any other changes to BAM.

(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 the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on February

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 79718 (January 3, 2017) (SR-BatsEDGX-2016-41).

<sup>4</sup> See id.

11, 2014. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Eric Swanson  
EVP, General Counsel  
(913) 815-7000

Anders Franzon  
SVP, Associate General Counsel  
(913) 815-7154

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

(a) Purpose

The purpose of this filing is to make permanent an aspect of BAM that is operating as a Pilot by removing Interpretation and Policy .05 from Rule 21.19.

Background

The Exchange proposed BAM in September of 2016 as a price improvement mechanism on the Exchange.<sup>5</sup> The Proposal was amended by the Exchange on December 15, 2016,<sup>6</sup> and approved, as amended, on January 3, 2017.<sup>7</sup> BAM Auctions were launched on the Exchange effective January 4, 2017. BAM includes functionality in which a Member (an "Initiating Member") may electronically submit for execution an

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<sup>5</sup> See Securities Exchange Act Release No. 78988 (September 29, 2016), 81 FR 69172 (October 5, 2016) (SR-BatsEDGX-2016-41) ("Proposal").

<sup>6</sup> See supra, note 3; see also SR-BatsEDGX-2016-41 Amendment No. 1, available at: [http://www.bats.com/us/options/regulation/rule\\_filings/edgx/](http://www.bats.com/us/options/regulation/rule_filings/edgx/).

<sup>7</sup> See supra, note 3.

order it represents as agent on behalf of a Priority Customer,<sup>8</sup> broker dealer, or any other person or entity (“Agency Order”) against principal interest or against any other order it represents as agent (an “Initiating Order”) provided it submits the Agency Order for electronic execution into the BAM Auction pursuant Rule 21.19. All options traded on EDGX Options are eligible for BAM.

#### Pilot Program

One component of BAM as approved by the Commission is currently operating as a Pilot, which is set to expire on January 18, 2017. The Pilot concerns that there is no minimum size requirement for orders to be eligible for a BAM Auction. The Exchange now seeks to remove Interpretation and Policy .05 from Rule 21.19 so that the Pilot may operate on a permanent basis.

Pursuant to the Pilot, there is no minimum size requirement for orders to be eligible for a BAM Auction. During this Pilot, the Exchange agreed to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. The Exchange proposed to adopt this provision on a pilot basis based on the fact that multiple other options exchanges have a similar provision with respect to their own price

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<sup>8</sup> The term “Priority Customer” means any person or entity that is not: (A) a broker or dealer in securities; or (B) a Professional. The term “Priority Customer Order” means an order for the account of a Priority Customer. See Rule 16.1(a)(45). A “Professional” is any person or entity that: (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members. See Rule 16.1(a)(46).

improvement mechanisms and such provisions have been operating on a pilot basis.<sup>9</sup>

Although the Exchange only recently launched BAM and does not yet have meaningful data to analyze pursuant to the Pilot, the Exchange is proposing to make the Pilot permanent based on the recent filings by multiple other options exchanges to make analogous provisions permanent.<sup>10</sup> The Exchange believes that BAM is sufficiently similar to these processes that there is no need to continue the Pilot in light of the recent filings to operate similar processes on a permanent basis. In particular, based on the rules discussed in additional detail below as well as the results of similar mechanisms operated by several other options exchanges, the Exchange believes that there will be meaningful competition in BAM for auctions of all sizes, that there will continue to be an active and liquid market functioning on the Exchange outside of the auction mechanism, and that

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<sup>9</sup> See, e.g., Securities Exchange Act Release Nos. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR-CBOE-2005-60) (order approving the CBOE AIM price improvement mechanism, including that there is no minimum size requirement on a pilot basis); 73590 (November 13, 2014), 79 FR 68919 (November 19, 2014) (SR-MIAX-2014-56) (order approving the MIAX PRIME price improvement mechanism, including that there is no minimum size requirement on a pilot basis); 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (order approving the NASDAQ BX PRISM price improvement mechanism, including that there is no minimum size requirement on a pilot basis).

<sup>10</sup> See, e.g., Securities Exchange Act Release Nos. 79499 (December 7 2016), 81 FR 90012 (December 13, 2016) (SR-CBOE-2016-084) (proposal to modify the CBOE AIM price improvement mechanism including the proposal to make the process permanent, specifically that there is no minimum size requirement); 79500 (December 7, 2016), 81 FR 90030 (December 13, 2016) (SR-MIAX-2016-46) (proposal to modify the MIAX PRIME price improvement mechanism including the proposal to make the process permanent, specifically that there is no minimum size requirement); 79465 (December 5, 2016), 81 FR 79465 (December 9, 2016) (SR-BX-2016-063) (proposal to modify certain aspects of the NASDAQ BX PRISM price improvement mechanism including the proposal to make the process permanent, including that there is no minimum size requirement).

there will be opportunities for price improvement for orders executed through BAM.

The Exchange believes BAM process will promote meaningful competition because it is open to all Members of the Exchange and, thus, all Members will have an equal opportunity to respond with their best prices during a BAM Auction. Since the Exchange considers all interest present in the Exchange's system, and not solely BAM responses, for execution against Agency Orders, those participants who are not explicit responders to a BAM Auction will expect executions via BAM as well.<sup>11</sup> Further, once an Initiating Member has submitted an Agency Order for processing in a BAM Auction, such Agency Order may not be modified or cancelled.<sup>12</sup> In addition, the Exchange believes there will be meaningful competition because an Initiating Order may not be a solicited order for the account of any market maker on EDGX Options ("Options Market Maker") assigned in the affected series on the Exchange.<sup>13</sup> Thus, such Options Market Makers assigned in the affected series will presumably be actively quoting in such series, and participate in BAM as unrelated orders, and/or will be responding to BAM Auctions in such series.

Similarly, the Exchange believes there will continue to be an active and liquid market functioning on the Exchange outside of the auction mechanism for the same reason noted above, namely that an Initiating Order may not be a solicited order for the account of an Options Market Maker.<sup>14</sup> In addition, resting quotes and orders that were

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<sup>11</sup> See Exchange Rule 21.19(b)(3).

<sup>12</sup> See Exchange Rule 21.19(b)(1)(A).

<sup>13</sup> See Exchange Rule 21.19(a)(6).

<sup>14</sup> See id.

at a price that is equal to the NBBO on the opposite side of the market from the Agency Order (“Priority Orders”) would have priority up to their size in the NBBO at the time an Auction is initiated (“Initial NBBO”) at each price level at or better than such Initial NBBO after Priority Customer and the Initiating Member have received allocations.<sup>15</sup> Thus, the concept of Priority Orders is intended to incentivize active participation on the EDGX Options order book outside of BAM Auctions.

Finally, the Exchange believes that there will be opportunities for price improvement for orders executed through BAM, including for smaller sized Agency Orders when the difference between the NBB and NBO is \$0.01. Pursuant to BAM, if any Agency Order is for less than 50 option contracts and the difference between the NBB and NBO is \$0.01, the Initiating Member must stop the entire Agency Order at one minimum price improvement increment better than the NBBO, which increment shall be determined by the Exchange but may not be smaller than \$0.01.<sup>16</sup> Thus, even for an Agency Order that may be less likely to receive price improvement as compared to other Agency Orders, namely a smaller order when the spread is one penny wide, the rules of BAM require that such order will receive price improvement.

Based on the foregoing, the Exchange believes it is appropriate to continue the no minimum size requirement on a permanent basis.

(b) Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities

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<sup>15</sup> See Exchange Rule 21.19(b)(4)(B)(iii).

<sup>16</sup> See Exchange Rule 21.19(a)(1)(A).



exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>17</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act<sup>18</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the Exchange believes that BAM, including the Pilot, results in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Member's complete control. The Exchange believes that BAM promotes and fosters competition and affords the opportunity for price improvement to more options contracts. The Exchange believes that allowing BAM to continue without a minimum size requirement is consistent with the Act based on similar pilots operated by other options exchanges with respect to similar price improvement mechanisms and the recent filings to operate such mechanisms and certain aspects thereof on a permanent basis.<sup>19</sup> In addition, the Exchange believes that the rules governing BAM, as adopted, will ensure: (i) that there is meaningful competition in BAM for auctions of all sizes;<sup>20</sup> (ii) that there continues to be an active and liquid market functioning on the Exchange outside of the auction mechanism;<sup>21</sup> and (iii) that there will be opportunities for price improvement for orders executed through BAM.<sup>22</sup> The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See supra, note 10.

<sup>20</sup> See supra, notes 11-13 and accompanying text.

<sup>21</sup> See supra, notes 14-15 and accompanying text.

<sup>22</sup> See supra, note 16 and accompanying text.

continuation of a program that briefly operated on a pilot basis.

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. In this regard, the Exchange notes that the rule change is being proposed in order to continue BAM without a minimum size requirement. BAM itself was a competitive response to analogous programs offered by other options exchanges but was only recently approved and launched. At the same time, other options exchanges that have been operating similar price improvement mechanisms for longer periods of time recently filed to operate such mechanisms on a permanent basis, including with regard to the fact that such mechanisms do not have a minimum size requirement.<sup>23</sup> Accordingly, the Exchange's proposal to operate BAM without a minimum size requirement is a competitive proposal and the Exchange believes this proposed rule change is necessary to permit fair competition among the options 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 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)

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<sup>23</sup> See supra, note 10.

The Exchange requests the Commission to find good cause to accelerate effectiveness of this proposed rule change pursuant to Section 19(b)(2) of the Act and to approve the proposed rule change prior to the 30th day after publication of the proposed rule change in the Federal Register. The Exchange believes there is good cause to grant expedited review and accelerated effectiveness of this amended proposal because the amendment is intended to allow the Exchange to continue to offer BAM without interruption, including with respect to the fact that BAM does not contain a minimum size requirement pursuant to the Pilot, prior to its expiration on January 18, 2017. The Exchange has based this proposal based on similar filings by other options exchanges<sup>24</sup> and believes that this proposal is necessary and also consistent with the protection of investors and the public interest due to the timing of the expiration of the pilots operated by such options exchanges, as well as the likely approval of such pilots on a permanent basis. As noted above, BAM was only recently approved, and yet, the Pilot is near expiration because it was proposed and approved to coincide with the pilots operated by other options exchanges. Because the proposal is intended to align the Exchange's rules with the rules of other options exchanges, the Exchange does not believe that the proposal raises any new or novel issues. Also, as set forth above, this proposal is a competitive proposal that will allow the Exchange to compete with other options exchanges that offer similar auction mechanisms to their participants. Finally, accelerated approval of the proposal will provide certainty to Members of the Exchange because it will allow BAM, which was only recently launched on the Exchange, to continue on the Exchange uninterrupted.

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<sup>24</sup> See supra, note 10.

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.

Exhibit 2–4: Not applicable.

Exhibit 5: Text of Proposed Rule Change

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BatsEDGX-2017-05)

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to EDGX Rule 21.19, Bats Auction Mechanism, as it Applies to the Equity Options Platform

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, Bats EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 for the Exchange’s equity options platform (“EDGX Options”) concerning a price improvement mechanism operated by EDGX Options, the Bats Auction Mechanism (“BAM” or “BAM Auction”), which was recently approved by the Commission.<sup>3</sup> A specific aspect of BAM is currently operating on a pilot basis (“Pilot”), which is set to expire on January 18, 2017.<sup>4</sup> The Pilot concerns the fact that there is no minimum size requirement for orders to be eligible for a BAM

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 79718 (January 3, 2017) (SR-BatsEDGX-2016-41).

<sup>4</sup> See id.

Auction, as described below. The Exchange seeks to make the Pilot permanent but does not propose any other changes to BAM.

The text of the proposed rule change is available at the Exchange's website at [www.bats.com](http://www.bats.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to make permanent an aspect of BAM that is operating as a Pilot by removing Interpretation and Policy .05 from Rule 21.19.

Background

The Exchange proposed BAM in September of 2016 as a price improvement mechanism on the Exchange.<sup>5</sup> The Proposal was amended by the Exchange on December 15, 2016,<sup>6</sup> and approved, as amended, on January 3, 2017.<sup>7</sup> BAM Auctions

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<sup>5</sup> See Securities Exchange Act Release No. 78988 (September 29, 2016), 81 FR 69172 (October 5, 2016) (SR-BatsEDGX-2016-41) ("Proposal").

<sup>6</sup> See *supra*, note 3; see also SR-BatsEDGX-2016-41 Amendment No. 1, available at: [http://www.bats.com/us/options/regulation/rule\\_filings/edgx/](http://www.bats.com/us/options/regulation/rule_filings/edgx/).

were launched on the Exchange effective January 4, 2017. BAM includes functionality in which a Member (an “Initiating Member”) may electronically submit for execution an order it represents as agent on behalf of a Priority Customer,<sup>8</sup> broker dealer, or any other person or entity (“Agency Order”) against principal interest or against any other order it represents as agent (an “Initiating Order”) provided it submits the Agency Order for electronic execution into the BAM Auction pursuant Rule 21.19. All options traded on EDGX Options are eligible for BAM.

#### Pilot Program

One component of BAM as approved by the Commission is currently operating as a Pilot, which is set to expire on January 18, 2017. The Pilot concerns that there is no minimum size requirement for orders to be eligible for a BAM Auction. The Exchange now seeks to remove Interpretation and Policy .05 from Rule 21.19 so that the Pilot may operate on a permanent basis.

Pursuant to the Pilot, there is no minimum size requirement for orders to be eligible for a BAM Auction. During this Pilot, the Exchange agreed to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an

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<sup>7</sup> See supra, note 3.

<sup>8</sup> The term “Priority Customer” means any person or entity that is not: (A) a broker or dealer in securities; or (B) a Professional. The term “Priority Customer Order” means an order for the account of a Priority Customer. See Rule 16.1(a)(45). A “Professional” is any person or entity that: (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members. See Rule 16.1(a)(46).

active and liquid market functioning on the Exchange outside of the Auction mechanism. The Exchange proposed to adopt this provision on a pilot basis based on the fact that multiple other options exchanges have a similar provision with respect to their own price improvement mechanisms and such provisions have been operating on a pilot basis.<sup>9</sup> Although the Exchange only recently launched BAM and does not yet have meaningful data to analyze pursuant to the Pilot, the Exchange is proposing to make the Pilot permanent based on the recent filings by multiple other options exchanges to make analogous provisions permanent.<sup>10</sup> The Exchange believes that BAM is sufficiently similar to these processes that there is no need to continue the Pilot in light of the recent filings to operate similar processes on a permanent basis. In particular, based on the rules discussed in additional detail below as well as the results of similar mechanisms operated

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<sup>9</sup> See, e.g., Securities Exchange Act Release Nos. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR-CBOE-2005-60) (order approving the CBOE AIM price improvement mechanism, including that there is no minimum size requirement on a pilot basis); 73590 (November 13, 2014), 79 FR 68919 (November 19, 2014) (SR-MIAX-2014-56) (order approving the MIAX PRIME price improvement mechanism, including that there is no minimum size requirement on a pilot basis); 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (order approving the NASDAQ BX PRISM price improvement mechanism, including that there is no minimum size requirement on a pilot basis).

<sup>10</sup> See, e.g., Securities Exchange Act Release Nos. 79499 (December 7 2016), 81 FR 90012 (December 13, 2016) (SR-CBOE-2016-084) (proposal to modify the CBOE AIM price improvement mechanism including the proposal to make the process permanent, specifically that there is no minimum size requirement); 79500 (December 7, 2016), 81 FR 90030 (December 13, 2016) (SR-MIAX-2016-46) (proposal to modify the MIAX PRIME price improvement mechanism including the proposal to make the process permanent, specifically that there is no minimum size requirement); 79465 (December 5, 2016), 81 FR 79465 (December 9, 2016) (SR-BX-2016-063) (proposal to modify certain aspects of the NASDAQ BX PRISM price improvement mechanism including the proposal to make the process permanent, including that there is no minimum size requirement).



by several other options exchanges, the Exchange believes that there will be meaningful competition in BAM for auctions of all sizes, that there will continue to be an active and liquid market functioning on the Exchange outside of the auction mechanism, and that there will be opportunities for price improvement for orders executed through BAM.

The Exchange believes BAM process will promote meaningful competition because it is open to all Members of the Exchange and, thus, all Members will have an equal opportunity to respond with their best prices during a BAM Auction. Since the Exchange considers all interest present in the Exchange's system, and not solely BAM responses, for execution against Agency Orders, those participants who are not explicit responders to a BAM Auction will expect executions via BAM as well.<sup>11</sup> Further, once an Initiating Member has submitted an Agency Order for processing in a BAM Auction, such Agency Order may not be modified or cancelled.<sup>12</sup> In addition, the Exchange believes there will be meaningful competition because an Initiating Order may not be a solicited order for the account of any market maker on EDGX Options ("Options Market Maker") assigned in the affected series on the Exchange.<sup>13</sup> Thus, such Options Market Makers assigned in the affected series will presumably be actively quoting in such series, and participate in BAM as unrelated orders, and/or will be responding to BAM Auctions in such series.

Similarly, the Exchange believes there will continue to be an active and liquid market functioning on the Exchange outside of the auction mechanism for the same

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<sup>11</sup> See Exchange Rule 21.19(b)(3).

<sup>12</sup> See Exchange Rule 21.19(b)(1)(A).

<sup>13</sup> See Exchange Rule 21.19(a)(6).

reason noted above, namely that an Initiating Order may not be a solicited order for the account of an Options Market Maker.<sup>14</sup> In addition, resting quotes and orders that were at a price that is equal to the NBBO on the opposite side of the market from the Agency Order (“Priority Orders”) would have priority up to their size in the NBBO at the time an Auction is initiated (“Initial NBBO”) at each price level at or better than such Initial NBBO after Priority Customer and the Initiating Member have received allocations.<sup>15</sup> Thus, the concept of Priority Orders is intended to incentivize active participation on the EDGX Options order book outside of BAM Auctions.

Finally, the Exchange believes that there will be opportunities for price improvement for orders executed through BAM, including for smaller sized Agency Orders when the difference between the NBB and NBO is \$0.01. Pursuant to BAM, if any Agency Order is for less than 50 option contracts and the difference between the NBB and NBO is \$0.01, the Initiating Member must stop the entire Agency Order at one minimum price improvement increment better than the NBBO, which increment shall be determined by the Exchange but may not be smaller than \$0.01.<sup>16</sup> Thus, even for an Agency Order that may be less likely to receive price improvement as compared to other Agency Orders, namely a smaller order when the spread is one penny wide, the rules of BAM require that such order will receive price improvement.

Based on the foregoing, the Exchange believes it is appropriate to continue the no minimum size requirement on a permanent basis.

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<sup>14</sup> See id.

<sup>15</sup> See Exchange Rule 21.19(b)(4)(B)(iii).

<sup>16</sup> See Exchange Rule 21.19(a)(1)(A).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>17</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act<sup>18</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the Exchange believes that BAM, including the Pilot, results in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Member's complete control. The Exchange believes that BAM promotes and fosters competition and affords the opportunity for price improvement to more options contracts. The Exchange believes that allowing BAM to continue without a minimum size requirement is consistent with the Act based on similar pilots operated by other options exchanges with respect to similar price improvement mechanisms and the recent filings to operate such mechanisms and certain aspects thereof on a permanent basis.<sup>19</sup> In addition, the Exchange believes that the rules governing BAM, as adopted, will ensure: (i) that there is meaningful competition in BAM for auctions of all sizes;<sup>20</sup> (ii) that there continues to be an active and liquid market functioning on the Exchange outside of the

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See supra, note 10.

<sup>20</sup> See supra, notes 11-13 and accompanying text.

auction mechanism;<sup>21</sup> and (iii) that there will be opportunities for price improvement for orders executed through BAM.<sup>22</sup> The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of a program that briefly operated on a pilot basis.

(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. In this regard, the Exchange notes that the rule change is being proposed in order to continue BAM without a minimum size requirement. BAM itself was a competitive response to analogous programs offered by other options exchanges but was only recently approved and launched. At the same time, other options exchanges that have been operating similar price improvement mechanisms for longer periods of time recently filed to operate such mechanisms on a permanent basis, including with regard to the fact that such mechanisms do not have a minimum size requirement.<sup>23</sup> Accordingly, the Exchange's proposal to operate BAM without a minimum size requirement is a competitive proposal and the Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from

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<sup>21</sup> See supra, notes 14-15 and accompanying text.

<sup>22</sup> See supra, note 16 and accompanying text.

<sup>23</sup> See supra, note 10.

members or other interested parties.

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 Exchange consents, the Commission will: (a) by order approve or disapprove such 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BatsEDGX-2017-05 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BatsEDGX-2017-05. 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-BatsEDGX-2017-05 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.<sup>24</sup>

Robert W. Errett  
Deputy Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

**Rules of Bats EDGX Exchange, Inc.**

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**CHAPTER XXI. TRADING SYSTEMS**

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Rule 21.19. Bats Auction Mechanism

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*Interpretations and Policies*

.01-.04 (No change.)

[.05 Subject to a Pilot expiring January 18, 2017, there will be no minimum size requirement for orders to be eligible for the Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction mechanism. Any raw data which is submitted to the Commission will be provided on a confidential basis.]

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