

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

Page 1 of \* 24

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2016 - \* 23

Amendment No. (req. for Amendments \*)

Filing by Bats EDGA Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input 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) \*

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Section 806(e)(2) \*

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Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

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

The Exchange proposes a rule change to amend EDGA Rule 2.5, Restrictions, regarding Members and associated persons of Members who are or become subject to a statutory disqualification.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Anders Last Name \* Franzon

Title \* SVP, Associate General Counsel

E-mail \* afranzone@bats.com

Telephone \* (913) 815-7154 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 10/24/2016

By Anders Franzon

(Name \*)

SVP, Associate General Counsel

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.

afranzone@bats.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT 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

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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

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Bats EDGA Exchange, Inc. (the “Exchange” or “EDGA”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend EDGA Rules regarding Members and associated persons of Members who are or become subject to a statutory disqualification. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>3</sup>

(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 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:

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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> 17 CFR 240.19b-4(f)(6)(iii).

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 the proposed rule change is to amend Rule 2.5 (Restrictions) to add language which provides the Exchange with the discretion to determine whether to permit a person to become a Member or an associated person of a Member or continue as a Member or in association with a Member on the Exchange.

Currently, Rule 2.5 restricts any persons from becoming a Member or continuing as a Member where (1) such person is other than a natural person and is not a registered broker or dealer, (2) such person is a natural person who is not either a registered broker or dealer or associated with a registered broker or dealer, (3) such person is subject to a statutory disqualification,<sup>4</sup> except that a person may become a Member or continue as a Member where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act,<sup>5</sup> the Commission has issued an order providing relief from such a disqualification and permitting such a person to become a Member, or (4) such person is not a member of another registered national securities exchange or association.

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<sup>4</sup> The Exchange uses the definition of statutory disqualification set forth in the Act. See Exchange Rule 1.5(z); 15 U.S.C. 78c(a)(39).

<sup>5</sup> See 17 CFR 240.19d-1, 17 CFR 240.19d-2, 17 CFR 240.19d-3, and 17 CFR 240.19h-1.

The Exchange notes that the proposed rule changes below are substantially similar to the rules of the International Securities Exchange (“ISE”),<sup>6</sup> the rules of the Chicago Board Options Exchange (“CBOE”),<sup>7</sup> and a recent amendment made by the BOX Options Exchange LLC (“BOX”).<sup>8</sup>

The Exchange first proposes to amend the language of Rule 2.5 to give itself the discretion to determine if a restriction on a Member becoming or continuing on as a Member is appropriate. The Exchange also proposes to make clear that the limitations of Rule 2.5 are equally applicable to persons associated with Members as they are to Members.

The Exchange then proposes to amend Rule 2.5(a)(3) to delete the language that allows a person to become a Member or continue as a Member where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act,<sup>9</sup> the Commission has issued an order providing relief from such a disqualification and permitting such a person to become a Member. The Exchange does not believe that this language reflects the Commission’s current review process, as an order is not necessarily required in every instance.

The Exchange then proposes to add three more situations with regard to whether a person may become a Member or continue as a Member in any capacity on the Exchange.

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<sup>6</sup> See ISE Rule 302; Securities Exchange Act Release No. 42455, 65 FR 11401 (March 2, 2000) (Order Granting Registration as a National Securities Exchange).

<sup>7</sup> See CBOE Rule 3.18; Securities Exchange Act Release No. 43056 (July 19, 2000), 65 FR 46524 (July 28, 2000) (SR-CBOE-1999-15) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Membership Rules).

<sup>8</sup> See BOX Rule 2040; Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR-BOX-2016-26).

<sup>9</sup> See *supra*, note 5.

The additional restrictions are when: (1) such person fails to meet any of the qualification requirements for becoming a Member or associated with a Member after approval thereof; (2) such person fails to meet any condition placed by the Exchange on such Member or association with a Member; and (3) such person violates any agreement with the Exchange. The Exchange proposes these additions in order to allow the Exchange more discretion in its determination as to whether a person may become or continue as a Member or in association with a Member. The Exchange notes that the Exchange must act consistent with the protection of investors and in the public interest and is prohibited from unfairly discriminating against Members or prospective Members.<sup>10</sup> Further, any prospective Member that has been denied membership in the Exchange or barred from becoming associated with a Member is entitled to certain due process pursuant to Chapter X of the Exchange's rules, which includes, but is not limited to, potential review by the Commission.<sup>11</sup>

The Exchange also proposes to add language with regard to a Member or associated person that becomes subject to a statutory disqualification under the Act. The proposed rule would allow a Member or associated person who becomes subject to a statutory disqualification and who wants to continue as a Member of the Exchange or in association with a Member, to submit a request to the Exchange seeking to continue as a Member or in association with a Member notwithstanding the statutory disqualification.<sup>12</sup>

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<sup>10</sup> See 15 U.S.C. 78f(b)(5).

<sup>11</sup> See Chapter X of the Exchange's Rules.

<sup>12</sup> The Member or person associated with a Member must submit the request within thirty (30) days of becoming subject to a statutory disqualification.

The Exchange also proposes to add language which allows Members and associated persons whose request to become a Member or associated with a Member is denied or conditioned, or any person whose association with a Member is denied or conditioned pursuant to the restrictions codified in Rule 2.5(a), and any Member or person associated with a Member who is not permitted to continue as a Member or be an associate with a Member or to which association is conditioned to seek review under the provisions of the Exchange Rules relating to adverse actions.<sup>13</sup>

Lastly, the Exchange proposes to add Interpretation and Policy .05, which will allow the Exchange to waive the provisions of Rule 2.5 when a proceeding is pending before another self-regulatory organization (“SRO”) to determine whether to permit a Member or associated person to continue membership or association notwithstanding a statutory disqualification. The Exchange notes that this proposed rule change is substantially similar to the comparable rules of the CBOE,<sup>14</sup> and the rules of BOX, as amended.<sup>15</sup> Further, in the event the Exchange determines to waive the provisions of this Rule with respect to a Member or associated person, the Exchange shall determine whether the Exchange will concur in any Exchange Act Rule 19h-1 filing made by another SRO with respect to the Member or associated person.

(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>13</sup> See Chapter X of the Exchange’s Rules.

<sup>14</sup> See Interpretation and Policy .01 to CBOE Rule 3.18.

<sup>15</sup> See IM-2040-8 to BOX Rule 2040.

exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>16</sup> In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,<sup>17</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule changes are consistent with the requirements above. Specifically, the Exchange believes the proposed changes will better enable the Exchange to use its discretion in determining whether a person may become or continue as a Member or associated person. Because of the discretionary language and additional restrictions, the Exchange may consider additional circumstances when determining whether a person may become or continue as a Member or associated person on the Exchange.

The Exchange believes that Proposed Rule 2.5(c) regarding any person or Member's ability to appeal a denied or conditioned request to become or continue as a Member or to associate with a Member is reasonable because it provides a fair procedure for the Members and persons associated with Members pursuant to Rule 7.6 (Summary Suspension of Exchange Services).

The Exchange also believes the proposed rule change regarding the waiver of the provisions of Rule 2.5 will better enable the Exchange to focus Exchange resources on

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).



other matters while another SRO is determining whether to permit a Member or associated person to become or continue being a Member or associated person on the exchange.

Lastly, the Exchange believes it is reasonable to remove language in Rule 2.5(a)(3) because the Exchange is eliminating any potential for confusion by simplifying the Exchange Rules, ensuring that Members, regulators, and the public can more easily navigate the Exchange's Rulebook.

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 not necessary or appropriate in furtherance of the purposes of the Act. As noted above, although the proposal will provide the Exchange with additional discretionary authority with respect to potential Members of the Exchange, the Exchange is bound by the Act to act consistent with the protection of investors and in the public interest and is prohibited from unfairly discriminating against Members or prospective Members.<sup>18</sup> Further, the proposal is not a competitive proposal designed to either attract or prevent prospective Members from joining the Exchange, but rather, is primarily focused on modifying the Exchange's rules to ensure clarity and consistency with other SROs.

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.

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

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 Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>19</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>20</sup> because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

The Exchange believes that its rule change proposal is appropriate for filing on an immediately effective basis under paragraph (f)(6) of Rule 19b-4. This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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. The Exchange believes that the proposed rule changes are a non-controversial proposal

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

because similar provisions are in place on other exchanges.<sup>21</sup> As such, the Exchange believes that the proposed rule changes do not raise any new, unique or substantive issues from those raised by the rules on other exchanges.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

As discussed above, the Exchange believes that the proposed rule changes are substantially similar in all material respects to the rules of ISE, CBOE, and BOX.<sup>22</sup> With regard to Interpretations and Policy .05, the Exchange notes that CBOE's rule only takes into account a waiver of the rule when a proceeding is pending before another self-regulatory organization to determine whether to permit a Member or associated person to continue being a Member or associated person notwithstanding a statutory disqualification. The Exchange is proposing to copy this language and also add that the Exchange may waive the provisions of the rule when a proceeding is pending to determine whether to permit a Member or associated person to become a Member or associated person.

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<sup>21</sup> See supra, notes 6 through 8.

<sup>22</sup> See supra, notes 6 through 8.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibits 2 - 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BatsEDGA-2016-23)

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend EDGA Rule 2.5, Restrictions, Regarding Members and Associated Persons of Members Who Are or Become Subject to a Statutory Disqualification

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 EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend EDGA Rules regarding Members and associated persons of Members who are or become subject to a statutory disqualification.

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

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 the proposed rule change is to amend Rule 2.5 (Restrictions) to add language which provides the Exchange with the discretion to determine whether to permit a person to become a Member or an associated person of a Member or continue as a Member or in association with a Member on the Exchange.

Currently, Rule 2.5 restricts any persons from becoming a Member or continuing as a Member where (1) such person is other than a natural person and is not a registered broker or dealer, (2) such person is a natural person who is not either a registered broker or dealer or associated with a registered broker or dealer, (3) such person is subject to a statutory disqualification,<sup>5</sup> except that a person may become a Member or continue as a Member where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act,<sup>6</sup> the

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<sup>5</sup> The Exchange uses the definition of statutory disqualification set forth in the Act. See Exchange Rule 1.5(z); 15 U.S.C. 78c(a)(39).

<sup>6</sup> See 17 CFR 240.19d-1, 17 CFR 240.19d-2, 17 CFR 240.19d-3, and 17 CFR 240.19h-1.

Commission has issued an order providing relief from such a disqualification and permitting such a person to become a Member, or (4) such person is not a member of another registered national securities exchange or association.

The Exchange notes that the proposed rule changes below are substantially similar to the rules of the International Securities Exchange (“ISE”),<sup>7</sup> the rules of the Chicago Board Options Exchange (“CBOE”),<sup>8</sup> and a recent amendment made by the BOX Options Exchange LLC (“BOX”).<sup>9</sup>

The Exchange first proposes to amend the language of Rule 2.5 to give itself the discretion to determine if a restriction on a Member becoming or continuing on as a Member is appropriate. The Exchange also proposes to make clear that the limitations of Rule 2.5 are equally applicable to persons associated with Members as they are to Members.

The Exchange then proposes to amend Rule 2.5(a)(3) to delete the language that allows a person to become a Member or continue as a Member where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act,<sup>10</sup> the Commission has issued an order providing relief from such a disqualification and permitting such a person to become a

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<sup>7</sup> See ISE Rule 302; Securities Exchange Act Release No. 42455, 65 FR 11401 (March 2, 2000) (Order Granting Registration as a National Securities Exchange).

<sup>8</sup> See CBOE Rule 3.18; Securities Exchange Act Release No. 43056 (July 19, 2000), 65 FR 46524 (July 28, 2000) (SR-CBOE-1999-15) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Membership Rules).

<sup>9</sup> See BOX Rule 2040; Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR-BOX-2016-26).

<sup>10</sup> See *supra*, note 6.

Member. The Exchange does not believe that this language reflects the Commission's current review process, as an order is not necessarily required in every instance.

The Exchange then proposes to add three more situations with regard to whether a person may become a Member or continue as a Member in any capacity on the Exchange. The additional restrictions are when: (1) such person fails to meet any of the qualification requirements for becoming a Member or associated with a Member after approval thereof; (2) such person fails to meet any condition placed by the Exchange on such Member or association with a Member; and (3) such person violates any agreement with the Exchange. The Exchange proposes these additions in order to allow the Exchange more discretion in its determination as to whether a person may become or continue as a Member or in association with a Member. The Exchange notes that the Exchange must act consistent with the protection of investors and in the public interest and is prohibited from unfairly discriminating against Members or prospective Members.<sup>11</sup> Further, any prospective Member that has been denied membership in the Exchange or barred from becoming associated with a Member is entitled to certain due process pursuant to Chapter X of the Exchange's rules, which includes, but is not limited to, potential review by the Commission.<sup>12</sup>

The Exchange also proposes to add language with regard to a Member or associated person that becomes subject to a statutory disqualification under the Act. The proposed rule would allow a Member or associated person who becomes subject to a statutory disqualification and who wants to continue as a Member of the Exchange or in

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<sup>11</sup> See 15 U.S.C. 78f(b)(5).

<sup>12</sup> See Chapter X of the Exchange's Rules.



association with a Member, to submit a request to the Exchange seeking to continue as a Member or in association with a Member notwithstanding the statutory disqualification.<sup>13</sup>

The Exchange also proposes to add language which allows Members and associated persons whose request to become a Member or associated with a Member is denied or conditioned, or any person whose association with a Member is denied or conditioned pursuant to the restrictions codified in Rule 2.5(a), and any Member or person associated with a Member who is not permitted to continue as a Member or be an associate with a Member or to which association is conditioned to seek review under the provisions of the Exchange Rules relating to adverse actions.<sup>14</sup>

Lastly, the Exchange proposes to add Interpretation and Policy .05, which will allow the Exchange to waive the provisions of Rule 2.5 when a proceeding is pending before another self-regulatory organization (“SRO”) to determine whether to permit a Member or associated person to continue membership or association notwithstanding a statutory disqualification. The Exchange notes that this proposed rule change is substantially similar to the comparable rules of the CBOE,<sup>15</sup> and the rules of BOX, as amended.<sup>16</sup> Further, in the event the Exchange determines to waive the provisions of this Rule with respect to a Member or associated person, the Exchange shall determine whether the Exchange will concur in any Exchange Act Rule 19h-1 filing made by another SRO with respect to the Member or associated person.

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<sup>13</sup> The Member or person associated with a Member must submit the request within thirty (30) days of becoming subject to a statutory disqualification.

<sup>14</sup> See Chapter X of the Exchange’s Rules.

<sup>15</sup> See Interpretation and Policy .01 to CBOE Rule 3.18.

<sup>16</sup> See IM-2040-8 to BOX Rule 2040.

## 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 Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule changes are consistent with the requirements above. Specifically, the Exchange believes the proposed changes will better enable the Exchange to use its discretion in determining whether a person may become or continue as a Member or associated person. Because of the discretionary language and additional restrictions, the Exchange may consider additional circumstances when determining whether a person may become or continue as a Member or associated person on the Exchange.

The Exchange believes that Proposed Rule 2.5(c) regarding any person or Member's ability to appeal a denied or conditioned request to become or continue as a Member or to associate with a Member is reasonable because it provides a fair procedure

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

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

for the Members and persons associated with Members pursuant to Rule 7.6 (Summary Suspension of Exchange Services).

The Exchange also believes the proposed rule change regarding the waiver of the provisions of Rule 2.5 will better enable the Exchange to focus Exchange resources on other matters while another SRO is determining whether to permit a Member or associated person to become or continue being a Member or associated person on the exchange.

Lastly, the Exchange believes it is reasonable to remove language in Rule 2.5(a)(3) because the Exchange is eliminating any potential for confusion by simplifying the Exchange Rules, ensuring that Members, regulators, and the public can more easily navigate the Exchange's Rulebook.

(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 not necessary or appropriate in furtherance of the purposes of the Act. As noted above, although the proposal will provide the Exchange with additional discretionary authority with respect to potential Members of the Exchange, the Exchange is bound by the Act to act consistent with the protection of investors and in the public interest and is prohibited from unfairly discriminating against Members or prospective Members.<sup>19</sup> Further, the proposal is not a competitive proposal designed to either attract or prevent prospective Members from joining the Exchange, but rather, is primarily focused on modifying the Exchange's rules to ensure clarity and consistency with other SROs.

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

(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 Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>20</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>21</sup> the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4.

determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- 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-BatsEDGA-2016-23 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-BatsEDGA-2016-23. 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-BatsEDGA-2016-23 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>22</sup>

Robert W. Errett  
Deputy Secretary

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<sup>22</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 EDGA Exchange, Inc.**

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**CHAPTER II. MEMBERS OF THE EXCHANGE**

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## Rule 2.5. Restrictions

(a) The Exchange may determine not to permit a [No] person [may] to become a Member or person associated with a Member or continue as a Member or person associated with a Member in any capacity on the Exchange where:

- (1) such person is other than a natural person and is not a registered broker or dealer;
- (2) such person is a natural person who is not either a registered broker or dealer or associated with a registered broker or dealer;
- (3) such person is subject to a statutory disqualification[, except that a person may become a Member or continue as a Member where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act, the Commission has issued an order providing relief from such a disqualification and permitting such a person to become a Member]; [or]
- (4) such person is not a member of another registered national securities exchange or association[.];
- (5) such person fails to meet any of the qualification requirements for becoming a Member or associated with a Member after approval thereof;
- (6) such person fails to meet any condition placed by the Exchange on such Member or association with a Member; or
- (7) such person violates any agreement with the Exchange.

(b) If a Member or person associated with a Member that becomes subject to a statutory disqualification under the Exchange Act wants to continue as a Member of the Exchange or in association with a Member, the Member or associated person must, within thirty (30) days of becoming subject to a statutory disqualification, submit a request to the Exchange seeking to continue as a Member or in association with a

Member notwithstanding the statutory disqualification. Failure to timely submit such a request is a factor that may be taken into consideration by the Exchange in making determinations pursuant to paragraph (a) of this Rule.

(c) Subject to Rule 7.6 (Summary Suspension of Exchange Services), any person whose request to become a Member is denied or conditioned, or any person whose association with a Member is denied or conditioned pursuant to paragraph (a) of this Rule, and any Member or person associated with a Member who is not permitted pursuant to paragraph (a) of this Rule to continue as a Member or to be associated with a Member or which continuance as a Member or association is conditioned, may seek review under the provisions of the Exchange Rules relating to adverse action.

[(b)](d) (No change to text.)

[(c)](e) (No change to text.)

[(d)](f) (No change to text.)

[(e)](g) (No change to text.)

#### *Interpretations and Policies*

.01-.04 (No changes.)

#### .05 Statutory Disqualification Proceedings Pending Before Another SRO

The Exchange may waive the provisions of this Rule when a proceeding is pending before another self-regulatory organization to determine whether to permit a Member or associated person of a Member to become or continue membership or association notwithstanding a statutory disqualification. In the event the Exchange determines to waive the provisions of this Rule with respect to a Member or associated person, the Exchange shall determine whether the Exchange will concur in any Exchange Act Rule 19h-1 filing made by another self-regulatory organization with respect to the Member or associated person.

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