

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsBYX-2016-27 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 Number SR-BatsBYX-2016-27. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 a.m. and 3:00 p.m. Copies of such filing also will 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 Number SR-BatsBYX-2016-27, and should be submitted on or before November 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Brent J. Fields,**

*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79151; File No. SR-BatsEDGX-2016-54]

### **Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend EDGX Rule 11.11, Routing to Away Trade Centers**

October 25, 2016.

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 October 12, 2016, 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 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 the Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend Exchange Rule 11.11(a) to describe when an order that includes a Short Sale instruction may be eligible for routing when a short sale price test restriction is in effect.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at 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 amend Exchange Rule 11.11(a) to describe when an order that includes a Short Sale<sup>5</sup> instruction may be eligible for routing when a short sale price test restriction is in effect. Under Rule 201 of Regulation SHO,<sup>6</sup> a short sale order in a covered security<sup>7</sup> generally cannot be executed or displayed by a Trading Center,<sup>8</sup> such as the Exchange, at a price that is at or below the current national best bid ("NBB")<sup>9</sup> when a short sale circuit breaker is in effect for the covered security (the "short sale price test restriction").<sup>10</sup>

Under Rule 11.11(a), an order that includes a Short Sale instruction when a short sale price test restriction pursuant to Rule 201 of Regulation SHO is in effect is not eligible for routing by the Exchange. If an order is ineligible for routing due to a Short Sale Circuit Breaker<sup>11</sup> being in effect and such order contains a Time-in-Force of Immediate-or-Cancel ("IOC"),<sup>12</sup> then the order will

<sup>5</sup> See Exchange Rule 11.6(o). The term "short sale" is defined as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." 17 CFR 242.200(a).

<sup>6</sup> See 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

<sup>7</sup> Rule 201(a)(1) of Regulation SHO defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(46); and 17 CFR 242.600(b)(47).

<sup>8</sup> Rule 201(a)(9) of Regulation SHO states that the term "Trading Center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) of Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.200(a)(9); 17 CFR 242.600(b)(78).

<sup>9</sup> 17 CFR 242.201(a)(4); 17 CFR 242.600(b)(42).

<sup>10</sup> 17 CFR 242.201(b)(1).

<sup>11</sup> In order to use consistent terminology, the Exchange proposes to replace the term "short sale price test restriction" with "Short Sale Circuit Breaker" within the first sentence of Rule 11.11(a).

<sup>12</sup> See Exchange Rule 11.6(q)(1).

<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).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

be cancelled. For any other order ineligible for routing due to a Short Sale Circuit Breaker being in effect, the Exchange will post the unfilled balance of the order to the EDGX Book,<sup>13</sup> treat the order as if it included a Book Only<sup>14</sup> or Post Only<sup>15</sup> instruction, and subject it to the Re-Pricing Instructions to Comply with Rule 201 of Regulation SHO, as described in Rule Exchange 11.6(l)(2),<sup>16</sup> unless the User has elected the order Cancel Back as described in Exchange Rule 11.6(b).

The Exchange proposes to specify in Rule 11.11(a) that orders that include a Short Sale instruction may be eligible for routing by the Exchange when a Short Sale Circuit Breaker is in effect where the User<sup>17</sup> selects either the Post to Away<sup>18</sup> or ROOC<sup>19</sup> routing options. In contrast to all other routing strategies, which are routed to other Trading Centers for immediate, the Post to Away and ROOC routing options are orders that are sent to other Trading Centers for posting and/or later execution as further described below. Under the Post to Away routing option, the remainder of a routed order is routed to and posted to the order book of a destination on the System routing table,<sup>20</sup> as specified by the User. ROOC is a routing option for orders that the User wishes to designate for participation in the opening, re-opening (following a halt, suspension, or pause), or closing process of a primary listing market other than the Exchange (e.g., the New York Stock Exchange, Inc. ("NYSE"), Nasdaq Stock Market LLC ("Nasdaq"), NYSE MKT LLC, or NYSE Arca, Inc. ("NYSE Arca")) if received before the opening/re-opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening, re-opening, or closing process, they are either posted to the EDGX Book, executed, or routed to destinations on

the System routing table.<sup>21</sup> Orders routed pursuant to the Post to Away and ROOC routing options that include a Short Sale instruction are identified as "short" are subject to the receiving Trading Center's processes for handling short sale orders in compliance with Rule 201 of Regulation SHO.<sup>22</sup>

Under Exchange Rule 11.11(a), orders that include a Short Sale instruction and a Time-in-Force of IOC that are not eligible for routing during a Short Sale Circuit Breaker will continue to be cancelled. For any other order that includes a Short Sale instruction that is ineligible for routing due to a Short Sale Circuit Breaker being in effect, the Exchange will continue to post the unfilled balance of the order to the EDGX Book, treat the order as if it included a Book Only or Post Only instruction, and subject it to the Re-Pricing Instructions to Comply with Rule 201 of Regulation SHO, as described in Rule 11.6(l)(2), unless the User has elected the order Cancel Back as described in Rule 11.6(b).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>23</sup> and furthers the objectives of Section 6(b)(5) of the Act<sup>24</sup> because it is designed to 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, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, protect investors and the public interest. Specifically, the proposed changes are designed to ensure clarity in the Exchange's rulebook with respect to the routing of orders in compliance with Rule 201 of Regulation SHO. In addition, providing Users the ability to send short sale orders that are routable pursuant to the Post to Away and ROOC routing options provides them additional flexibility with regard to the handling of their orders. The Exchange notes that orders that include a Short Sale instruction routed pursuant to the Post to Away or ROOC routing options are identified as "short" and, therefore, subject to the receiving Trading Center's processes for handling short sale orders

in compliance with Regulation SHO.<sup>25</sup> The Exchange also notes that other national securities exchanges do not expressly prohibit the routing of short sale orders. For example, Nasdaq and NYSE Arca allow for the routing of short sale orders generally, and do not limit a short sale order's ability to route to certain routing options.<sup>26</sup> Thus, the proposal is directly targeted at removing impediments to and perfecting the mechanism of a free and open market and national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>27</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is simply proposing to reflect in its rules that orders that include a Short Sale instruction may be routed to an away marked for execution under two specific routing strategies offered by the Exchange.

## 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

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>28</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>29</sup> the Exchange has

<sup>25</sup> See *supra* note 21.

<sup>26</sup> See e.g., Nasdaq Rules 4702(a) (stating generally that an "[o]rder may . . . may be routed to other market centers for potential execution if designated as 'Routable'") and 4763 (not prohibiting the routing of a short sale order during a short sale price test). See also e.g., NYSE Arca Rule 7.6P (not prohibiting the routing of a short sale order during a short sale price test).

<sup>27</sup> 15 U.S.C. 78k-1(a)(1).

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4.

<sup>13</sup> See Exchange Rule 1.5(d).

<sup>14</sup> See Exchange Rule 11.6(n)(3).

<sup>15</sup> See Exchange Rule 11.6(n)(4).

<sup>16</sup> In sum, under Exchange Rule 11.6(l)(2), an order to sell with a Short Sale instruction that, at the time of entry, could not be executed or displayed in compliance with Rule 201 of Regulation SHO will be re-priced by the System at the Permitted Price. See Exchange Rule 11.6(l)(2) for a full description of the Exchange's Re-Pricing Instructions to Comply with Rule 201 of Regulation SHO.

<sup>17</sup> See Exchange Rule 1.5(cc).

<sup>18</sup> See 11.11(g)(12).

<sup>19</sup> See 11.11(g)(8).

<sup>20</sup> The term "System routing table" is defined as the "the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them." See Exchange Rule 11.11(g).

<sup>21</sup> Shares returned to the Exchange after routing are handled in accordance with Exchange Rules, including Rule 11.10(a).

<sup>22</sup> See, e.g., Nasdaq Rule 4763; NYSE Rule 440B; and Nasdaq's Regulation SHO Frequently Asked Questions (updated March 10, 2011), available at <https://nasdaqtrader.com/content/marketregulation/regsho/regshoFAQs.pdf>.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

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 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 proposed rule change 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsEDGX-2016-54 on the subject line.

##### *Paper Comments*

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Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will 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 Number SR-BatsEDGX-2016-54, and should be submitted on or before November 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Brent J. Fields,**  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79153; File No. SR-OPRA-2016-02]

#### Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Amend OPRA's Non-Display Use Fees

October 25, 2016.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on September 29, 2016, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").<sup>3</sup> The OPRA Plan

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SEC Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.com>. The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The fourteen participants to the OPRA Plan are BATS BZX Exchange, Inc., BATS EDGX Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International

Amendment would implement changes to OPRA's Non-Display Use Fees on November 1, 2016. The Commission is publishing this notice to provide interested persons an opportunity to submit written comments on the OPRA Plan amendment.

#### I. Description and Purpose of the Plan Amendment

OPRA proposes to amend footnotes 10 and 11 in the OPRA Fee Schedule to clarify the application of OPRA's "Non-Display Use" fees in certain respects.<sup>4</sup> OPRA is not proposing any changes in the Non-Display Use fees themselves, although OPRA does propose to add the word "Monthly" to the first phrase in the Non-Display Use Fee entry in the Fee Schedule.

##### *(a) Elimination of the Term "Datafeed"*

OPRA proposes to eliminate the use of the term "datafeed" in footnotes 10 and 11. Some OPRA Vendors have argued that the use of the term "datafeed" in these footnotes provides a basis for saying that the Non-Display Use fees are not applicable to their downstream OPRA data recipients. That argument is based on a separate OPRA Policy entitled "Datafeeds."<sup>5</sup> In that Policy, the term "datafeed" is defined as "any uncontrolled retransmission of OPRA market data." The argument has been that an OPRA Vendor and its downstream data recipients are not making Non-Display Use of OPRA data if the Vendor "controls"—that is, entitles—the server on which the Non-Display Use of the OPRA data is made.

From OPRA's perspective, this is clearly incorrect. The Datafeeds Policy is directed to describing how OPRA data is *received*, in order to explain the circumstances in which an OPRA data recipient needs to be a party to a "Vendor Agreement", a "Direct Access Rider" and/or an "Indirect Access Rider". The Datafeeds Policy is not relevant to the question of how OPRA data is *used*, specifically the question of whether a particular use of OPRA data constitutes "Non-Display Use." OPRA believes that the Datafeeds Policy is irrelevant to the question of the applicability of Non-Display Use fees.

Nonetheless, OPRA recognizes that the use of the term "datafeed" in separate OPRA documents with

Securities Exchange, LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, NYSE MKT LLC, and NYSE Arca, Inc.

<sup>4</sup> OPRA proposed its current Non-Display Use fees in Securities Exchange Act Release No. 77584 (April 12, 2016), 81 FR 22670 (April 18, 2016) (File No. OPRA-2015-01).

<sup>5</sup> This Policy is available on the OPRA Web site under the "Policies" tab.