



8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79343; File No. SR-BatsEDGA-2016-27)

November 17, 2016

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of an Amendment to Rule 8.11, Effective Date of Judgment and the Adoption of Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 3, 2016, 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 Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to add proposed Rule 8.18 to require the publication of the Exchange’s disciplinary complaints and disciplinary decisions issued and to remove the part of Interpretation and Policy .01 to Rule 8.11 that currently governs the publication of disciplinary complaints and information related to disciplinary complaints.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

The text of the proposed rule change is available at the Exchange's website at 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

Reorganization of Exchange Rules Governing Release of Disciplinary Complaints, Decisions and Other Information Based on FINRA Rule 8313

Interpretation and Policy .01 to Rule 8.11 currently provides, in part, that the Exchange shall cause details regarding all formal disciplinary actions where a final decision has been issued, except as provided in Rule 8.15(a), to be published on its website. Interpretation and Policy .01 also provides that the Exchange shall not issue any press release or other statement to the press concerning any formal or informal disciplinary matter unless the Chief Regulatory Officer recommends a press release to the Executive Committee or the Board of the Exchange and either body determines that such a press release is warranted. The Exchange proposes to remove parts of Interpretation and Policy .01 to Rule 8.11 described above and to add proposed

Rule 8.18 modeled after FINRA Rule 8313,⁵ as described below, to govern the publication of disciplinary information. The scope of proposed Rule 8.18 would be limited to publication of materials relating to the disciplinary process set forth in Chapter VIII because the Exchange seeks to provide prompt access to more information regarding its disciplinary actions to Members and associated persons. By providing more information regarding the Exchange's disciplinary process, including publishing disciplinary complaints at the time they are filed, Members and associated persons will be able to sooner identify conduct that the Exchange views as problematic and have will [sic] the ability to take corrective steps sooner than they can under the current rules that provide only for the publication of disciplinary decisions after they become final. In that regard, the Exchange has determined not to adopt FINRA Rule 8313 in all respects at this time.⁶

General Standards

The Exchange proposes Rule 8.18(a) to be entitled "General Standards." The text would set forth general standards for the release to the public of disciplinary complaints, decisions, or information.

Proposed Rule 8.18(a)(1) would, in part, essentially replace the part of Interpretation and Policy .01 to Rule 8.11 that addresses the publication of disciplinary decisions and conform [sic] to FINRA Rule 8313. The proposed rule would provide that the Exchange shall release to the public a copy of and, at the Exchange's discretion, information with respect to, any disciplinary

⁵ New York Stock Exchange, LLC ("NYSE") similarly adopted rules modeled after FINRA Rule 8313. See Securities Exchange Act Release No. 78664 (August 24, 2016), 81 FR 59678, 59679 (August 30, 2016) (SR-NYSE-2016-40).

⁶ NYSE similarly declined to adopt all provisions of FINRA Rule 8313 insofar as the FINRA rule related to information beyond the formal disciplinary process. See id. at 59679.

decision issued by the Exchange, as defined in proposed Rule 8.18(e). Additionally, the proposed rule would provide that the Exchange would release to the public copies of disciplinary complaints as defined in proposed Rule 8.18(e). Also, the decision to issue other related information, including a press release, under proposed Rule 8.18(a)(1) would be in the discretion of the Exchange generally instead of requiring Executive Committee or Exchange Board approval as currently required in Interpretation and Policy .01 to Rule 8.11. Proposed Rule 8.18(a)(1) would also provide that, in response to a request, the Exchange shall also release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Exchange, as defined in proposed Rule 8.18(e). These proposed amendments are modeled after FINRA Rule 8313(a)(1) and would be substantially similar to the FINRA rule.

The Exchange does not propose to incorporate subsections (2), (3), (4) and (6) of FINRA Rule 8313(a) because the Exchange proposes to limit the scope of proposed Rule 8.18 to the publication of materials relating to the disciplinary process set forth in Chapter VIII at this time.⁷

⁷ Subsection (2) of FINRA Rule 8313(a) provides for the publication of statutory disqualification decisions and temporary cease and desist orders.

Subsection (3) provides for the publication of any suspension, cancellation, expulsion, or bar for: failing to keep information current; failing to pay dues; failing to comply with an arbitration award or related settlement or an order of restitution or settlement providing for restitution; failing to meet the eligibility or qualification standards or prerequisites for access to services; or experiencing financial or operational difficulties. Additionally, subsection (3) provides for the publication of any suspension, cancellation, expulsion, or bar imposed as the result of a summary proceeding for actions authorized by Section 15A(h)(3) of the Act.

Subsection (4) addresses procedures for membership proceedings.

The Exchange does not propose to adopt subsections (2), (3), and (4) because, as discussed above, the Exchange's proposal is intended to provide more information regarding the Exchange's disciplinary process to the public so that Members and associated persons will be able to identify conduct that the Exchange views as problematic and will have the ability to take corrective steps sooner. Subsections (2), (3), and (4) to the FINRA rule would not further that purpose because those subsections

The Exchange, however, notes that although Exchange Rules do not provide for temporary cease and desist orders as provided for in FINRA Rule 9800, the Exchange's Client Suspension Rule – Rule 8.17 – is similar in its procedure and purpose. The Exchange proposes to include a client suspension order issued pursuant to Rule 8.17 in the definition of “disciplinary decision” under proposed Rule 8.18(e)(2) consistent with FINRA's inclusion of its temporary cease and desist orders for publication because the Exchange views client suspension proceedings as disciplinary in nature. For the same reason, the Exchange proposes to include a notice of the initiation of a client suspension proceeding in the definition of “disciplinary complaint” under proposed Rule 8.18(e)(1).

The Exchange does not propose to incorporate subsection (5) of FINRA Rule 8313(a) because the Exchange does not have at this time provisions analogous to FINRA Rule 6490⁸ and the FINRA Rule 9700 Series.⁹ Additionally, the Exchange does not propose to include its procedures for exemptive relief analogous to the FINRA Rule 9600 Series because the Exchange proposes to limit scope of proposed Rule 8.18 to the publication of disciplinary materials.

Release Specifications

would require the publication of information generally relating to membership eligibility or failure to satisfy one's membership obligations rather than discipline. Subsection (2) additionally addresses temporary cease and desist proceedings, which the Exchange does not have, and Subsection (3) additionally addresses Section 15A(h)(3) of the Act, which applies only to registered securities associations.

Subsection (6) permits discretionary release of a complaint, decision, order, notification, or notice issued under FINRA rules, where the release of such information is deemed by FINRA's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) to be in the public interest. The Exchange does not propose to adopt this open-ended subsection because [sic] Exchange intends for the proposed rule to instead be limited to disciplinary information for the reasons discussed above.

⁸ “Processing of Company-Related Actions.”

⁹ “Procedure For Grievances Concerning the Automated Systems.”

The Exchange proposes to include subsection (b) to proposed Rule 8.18 entitled “Release Specifications” modeled after FINRA Rule 8313(b). Proposed Rule 8.18(b)(1) provides that copies of, and information with respect to, any disciplinary complaint released to the public pursuant to paragraph (a) of the proposed rule shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by the Exchange in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. The proposed rule would be the same as FINRA Rule 8313(b)(1) except that the proposed rule would substitute the term “Exchange” for “FINRA.”

Proposed Rule 8.18(b)(2) provides that copies of, and information with respect to, any disciplinary decision released to the public pursuant to paragraph (a) of the proposed rule prior to the expiration of the time period provided for an appeal or call for review as permitted under Exchange Rules or the Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the Commission. The proposed rule would be substantially similar to FINRA Rule 8313(b)(2). The proposed rule would substitute the term “Exchange” for “FINRA” and would not include a provision relating to the release specifications for an “other decision, order, notification, or notice” because, as noted above, the Exchange proposes to limit the rule only to disciplinary complaints and disciplinary decisions.

Discretion to Redact Certain Information or Waive Publication

The Exchange has determined that, subject to limited exceptions, disciplinary information should be released to the public in unredacted form. To provide the standard for such limited exceptions, the Exchange proposes subsection (c) of proposed Rule 8.18 entitled “Discretion to Redact Certain Information or Waive Publication,” modeled after FINRA Rule 8313(c).

Proposed Rule 8.18(c)(1) would provide that the Exchange reserves the right to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns. The proposed rule would be the same as FINRA Rule 8313(c)(1) except that the proposed rule would substitute the term “Exchange” for “FINRA.”

Similarly, proposed Rule 8.18(c)(2) provides that, notwithstanding paragraph (a) of the proposed rule, the Exchange may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint or disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. The proposed rule would be the same as FINRA Rule 8313(c)(2) except that the proposed rule would substitute the term “Exchange” for “FINRA” and would not include a provision relating to the waiver of the release of an “other decision, order, notification, or notice” because, as noted above, the Exchange proposes to limit the rule only to disciplinary complaints and disciplinary decisions.

Notice of Appeals of Exchange Decisions

The Exchange proposes to include subsection (d) to proposed Rule 8.18 entitled “Notice of Appeals of Exchange Decisions to the SEC” modeled on FINRA Rule 8313(d). Proposed Rule 8.18(d) provides that the Exchange must provide notice to the public when a disciplinary decision of the Exchange is appealed to the Commission and the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the Commission. The proposed rule would be the same as FINRA Rule 8313(d) except that the proposed Rule would substitute the term “Exchange” for “FINRA.”

Definitions

Finally, the Exchange proposes subsection (e) of proposed Rule 8.18 entitled “Definitions.” Proposed Rule 8.18(e) would set forth definitions of the terms “disciplinary complaint” and “disciplinary decision” as used in the rule, modeled after the definitions contained in FINRA Rule 8313(e).

First, proposed Rule 8.18(e)(1) would define the term “disciplinary complaint” to mean any statement of charges issued pursuant to Rule 8.4 or any notice served pursuant to Rule 8.17. This proposed rule is based on FINRA Rule 8313(e)(1) except that it replaces the term “complaint pursuant to the Rule 9200 Series” with “statement of charges pursuant to Rule 8.4” and it includes a notice of the initiation of a client suspension proceeding issued pursuant to Rule 8.17 in the definition of “disciplinary complaint.”

Second, proposed Rule 8.18(e)(2) would define the term “disciplinary decision” to mean any decision issued pursuant to the Chapter VIII, including, decisions issued by a Hearing Panel or the Appeals Committee and accepted offers of settlement. The Exchange additionally proposes to include suspension orders issued pursuant to Rule 8.17 in the definition of “disciplinary decision.” The Exchange does not propose to adopt the part of FINRA Rule 8313(e)(2) that discusses decisions issued pursuant to the FINRA Rule 9550 Series, FINRA Rule 9600 Series, FINRA Rule 9700 Series, or FINRA Rule 9800 Series, or decisions, notifications, or notices issued pursuant to the FINRA Rule 9520 Series because, as explained above, the Exchange does not propose to adopt the provisions of the FINRA Rule providing for the publication of such information. Finally, proposed Rule 8.18(e)(2) would provide that minor rule violation plan letters issued pursuant to Rules 8.15 and 25.3 are not subject to the proposed rule.

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.¹⁰ In particular, the proposal is consistent with Section 6(b)(1)¹¹ in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. In particular, the Exchange believes that the proposed addition of Rule 8.18 regarding release of disciplinary complaints, decisions and other information are [sic] consistent with Section 6(b)(1) of the Act because it would establish general standards for the release of disciplinary information to the public to provide greater access to information regarding the Exchange's disciplinary actions.

For the same reasons, the Exchange believes that proposed Rule 8.18 furthers the objectives of Section 6(b)(5) of the Act¹² because the proposed rule is designed 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. In particular, proposed Rule 8.18 furthers the objectives of Section 6(b)(5) of the Act by providing greater clarity, consistency, and transparency regarding the release of disciplinary complaints, decisions and other information to the public. By adopting the proposed Rule 8.18 modeled after FINRA Rule 8313, the Exchange

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78f(b)(5).

would establish standards for the release of disciplinary information to the public in line with those in effect at FINRA that provide greater access to information regarding the Exchange's disciplinary actions and describe the scope of information subject to proposed Rule 8.18. The Exchange believes that this proposed rule change promotes greater transparency to the Exchange's disciplinary process, and that the proposed rule change provides greater access to information regarding its disciplinary actions, and also provides valuable guidance and information to Members, associated persons, other regulators, and the investing public.

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. The proposed rule change is not intended to address competitive issues, but rather it is designed to enhance the Exchange's rules governing the release of disciplinary complaints, decisions and other information to the public, thereby providing greater clarity and consistency and resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions.

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: (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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. The Exchange states that FINRA performs services for it under a Regulatory Services Agreement (“RSA”), including the filing and prosecution of disciplinary complaints on the Exchange’s behalf. FINRA also files and prosecutes disciplinary complaints on its own behalf, sometimes on cases involving identical or similar conduct to the cases it brings on the Exchange’s behalf. Without the waiver, the Exchange is concerned that FINRA might publish a complaint during the 30-day operative delay, and that the Exchange would not be permitted to publish its own complaint, prepared by FINRA, regarding the same conduct. According to the Exchange, this would supply the public with an incomplete picture of the disciplinary proceedings, the full nature of which could not be disclosed until much later when a final disciplinary decision is issued. The Exchange, therefore, believes that waiver of the operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to immediately publish any disciplinary complaints or decisions that are filed or issued after the proposal is filed. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

interest because it will allow EDGA to publish disciplinary complaints or decisions that have been filed or issued without delay. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁶

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 e-mail to rule-comments@sec.gov. Please include File Number SR-BatsEDGA-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-BatsEDGA-2016-27. This file number should

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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-BatsEDGA-2016-27 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Brent J. Fields
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

