Route, in its capacity as a facility of EDGX, to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.[20]

The Exchange has proposed ongoing conditions applicable to DE Route's inbound routing activities in its capacity as a facility of EDGX, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of DE Route,[21] combined with a non-affiliated SRO's monitoring of DE Route's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to DE Route. The Commission also believes that the Exchange's Rule 2.12(a)(3) is designed to ensure that DE Route cannot use any information advantage it may have because of its affiliation with the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–EDGA–2013–13) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[20] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007); 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR–BATS–2012–013); 66807 (April 13, 2012), 77 FR 23300 (April 18, 2012) (SR–BYX–2012–006); 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR–BX–2013–013); and 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR–Phlx–2013–15).

[21] This oversight will be accomplished through a 17d–2 Agreement. *See* Approval Order, 75 FR at 13165; and Notice, 78 FR at 31996.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69884; File No. SR–BYX–2013–013]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending and Restating the Amended and Restated By-Laws of BATS Y-Exchange, Inc.

June 27, 2013.

I. Introduction

On April 29, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and restate the Amended and Restated By-Laws of BATS Y-Exchange. The proposed rule change was published for comment in the **Federal Register** on May 15, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend and restate its Amended and Restated By-Laws (the ''Current By-Laws'') and adopt these changes as its Second Amended and Restated By-Laws (the ''New By-Laws''). The Exchange's proposed amendments to the Current By-Laws include: (i) Providing that the Board of Directors will consist of four (4) or more directors, with the board fixing the actual number of directors from time to time by resolution of the Board of Directors rather than fixing the number of directors in the by-laws; (ii) clarifying that the existing procedures for filling vacancies on the Board of Directors apply only for non-Member Director Representative Director positions; (iii) clarifying separate procedures for filling vacancies on the Board of Directors for Member Representative Director positions; and (iv) adding a new requirement that the processes for filling any director vacancies apply to vacancies created as a result of an increase in the size of the board.

A. Number of Directors

Article III, Section 2(a) of the Exchange's Current By-Laws fixes the number of directors of the Exchange at ten (10) directors. Article III, Section 2(a) of the New By-Laws would amend Article III, Section 2(a) to state that the Board of Directors of the Exchange shall consist of four (4) or more members, the number thereof to be determined from time to time by resolution of the Board of Directors, subject to the compositional requirements of the board set forth in Article III, Section 2(b).

The Current By-Laws and the New By-Laws require that the Board of Directors consist of the following: (i) one (1) director who is the Chief Executive Officer of the Company; (ii) representation by Member Representative Directors of at least twenty percent (20%) of the board;[4] and (iii) representation by Non-Industry Directors (including at least one (1) Independent Director) that equals or exceeds the sum of the number of Industry Directors and Member Representative Directors.[5] Under the Current By-Laws and the New By-Laws, the Chief Executive Officer is considered to be an Industry Director.[6] Additionally, under the Current By-Laws and New By-Laws, the Member Representative Director requirement of twenty percent (20%) would require the board to include at least one (1) Member Representative Director.[7] Thus, under the proposal, the minimum requisite sum of the number of Industry Directors and Member Representative Directors would equal two (2) directors. As such, under the composition requirements, the board would also have to include at least two (2) Non-Industry Directors, bringing the total minimum size of the board to four (4) directors.

B. Member Representative Director Vacancies

A Member Representative Director is defined in relevant part in Article I of the Current By-Laws as a Director ''elected by the stockholders after having been nominated by the Member Nominating Committee[8] or by an Exchange Member pursuant to these By-Laws.'' Article III, Section 4 of the Current By-Laws in turn specifies the precise process the Member Nominating

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69541 (May 8, 2013), 78 FR 28695 (May 15, 2013) (''Notice'').

[4] The Exchange noted that because the number of Member Representative Directors must be at least twenty percent (20%) of the board, it is required under the Current By-Laws and the New By-Laws that if twenty percent (20%) of the directors then serving on the board is not a whole number, such number of Member Representative Directors must be rounded up to the next whole number.

[5] *See* Article III, Section 2(b) of the Current By-Laws.

[6] *See id.*

[7] *See id.*

[8] *See* Article VI, Section 3 of the Current By-Laws for a detailed description of the Member Nominating Committee and its responsibilities.

Committee is required to follow with the respect to the election and nomination of Member Representative Directors.[9]

As distinguished from the nomination and election of directors as part of the Exchange's annual stockholders meeting, Article III, Section 6 of the Current By-Laws specifies the procedures for filling vacancies on the board when a director position becomes vacant prior to the election of a successor at the end of such director's term, whether because of death, disability, disqualification, removal, or resignation. Under these circumstances, the Nominating Committee[10] must nominate, and the stockholders must elect, a person satisfying the classification for the directorship in compliance with the board compositional requirements of Article III, Section 2(b) of the Current By-Laws to fill such vacancy; provided, however, that if the remaining term of office of a Member Representative Director at the time of such director's termination is not more than six (6) months, during the period of vacancy the board is not deemed to be in violation of the board compositional requirements because of such vacancy.

The Exchange has proposed, in Article III, Section 6(a) of the New By-Laws, to clarify that the procedures therein for filling director vacancies would apply only to non-Member Representative Director positions. The Exchange also has proposed in new Section 6(b) of the New By-Laws to clarify separate procedures for filling Member Representative Director vacancies on the board, which procedures would require that the Member Nominating Committee shall either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy.

In addition, the Exchange has proposed, in Article III, Section 6(a) and (b) of the New By-Laws, to add the requirement that the process for filling vacancies described therein would be followed in the circumstance where such vacancy is created as a result of an increase in the size of the board. Under the New By-Laws, in the case of a director filling a vacancy not resulting from a newly-created directorship, the new director would serve until the expiration of the remaining term. However, in the case of a director filling a vacancy resulting from a newly-created directorship, the new director would serve until the expiration of such person's designated term. In all cases, however, if the remaining term of office of a director at the time of such director's vacancy is not more than six (6) months, during the period of vacancy the board would not be deemed to be in violation of Article III, Section 2(b) because of such vacancy. Under the Current By-Laws, this six-month grace period applies only to Member Representative Director vacancies. Under the New By-Laws, this six-month grace period would be expanded to apply to any director vacancy, which the Exchange notes is consistent with precedent from other exchanges.[11]

III. Comment Letter and the Exchange's Response

The Commission received no comment letters on the proposed rule change.

IV. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires, among other things, that an exchange be so organized and have the capacity to carry out the purposes of the Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Commission notes that the proposed rule change would provide a minimum number of directors for the Board of Directors of the Exchange, rather than a fixed number of directors. As such, the Exchange has noted that the New By-Laws would provide the board with the flexibility to increase or decrease the size of the board by resolution, rather than amending the by-laws each time the board seeks to increase or decrease the size of the board.[14] The Commission notes that the Exchange has represented that it is not proposing to amend any of the compositional requirements of the board, which are set forth in in Article III, Section 2(b) of the Current By-Laws and the New By-Laws.[15]

The proposed rule change would clarify that the Current By-Laws' existing procedures for filling director positions on its Board of Directors apply only to non-Member Representative Director positions and would clarify a specific process for filling vacancies for Member Representative Director positions. The Exchange has represented that the lack of such a specific process in the Current By-Laws for filling a Member Representative Director position that becomes vacant prior to the election of a successor at the end of such director's term has led to some confusion regarding the exact process to follow.[16] In particular, the Exchange has noted that the Current By-Laws would appear to require that a Member Representative Director vacancy be filled by the Nominating Committee; however, the Exchange has stated that such a requirement would conflict with the Current By-Laws' definition of a Member Representative Director, which requires in all cases that such person be nominated by the Member Nominating Committee or by an Exchange Member. The Exchange has represented that it intended that its Current By-Laws would require that the Member Nominating Committee nominate one or more candidates to fill Member Representative Director vacancies, which is consistent with precedent from other exchanges.[17] The Commission notes that the proposed rule change would make such intended process for filling vacancies for Member Representative Director positions explicit in the New By-Laws.

The proposed rule change would also clarify that the procedures for filling any vacancies would also apply to vacancies created as a result of an increase in the size of the board. The Exchange has represented that generally, if the board has determined to increase the size of the board, it is creating the new directorship seat(s) because it has identified a qualified candidate(s) who would improve the overall quality of the board.[18] The Exchange has stated that, under these circumstances, time is of the essence and waiting to elect a director(s) to fill a newly created

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[9] *See* Article III Section 4(c) of the Current By-Laws for detailed provisions relating to the Member Representative Director nomination and election process.

[10] *See* Article VI, Section 2 of the Current By-Laws for a detailed description of the Nominating Committee and its responsibilities.

[11] *See* Notice *supra* note 3, 78 FR at 28697 n. 7.

[12] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] *See* Notice *supra* note 3, 78 FR at 28696.

[15] *See id.*

[16] *See* Notice *supra* note 3, 78 FR at 28697.

[17] *See id.*

[18] *Id.*

directorship seat(s) at the next scheduled annual stockholder meeting is not in the best interests of the Exchange or its stockholders. Consequently, the Exchange has stated that it is necessary that the New By-Laws provide a more streamlined process to fill a vacancy created by increasing the size of the board.[19] The Commission notes that Exchange has represented that any vacancies filled pursuant to the New By-Laws would be required to continue to comply with its existing compositional requirements.

Finally, the proposed rule change would also provide that if the remaining term of office of any director at the time of the director's vacancy is not more than six months, during the period of such vacancy the board will not be deemed to be in violation of the compositional requirements of Article III, Section 2(b) because of such vacancy. The Exchange notes that applying the six month grace period to any director vacancy, rather than just a Member Representative Director vacancy, is consistent with precedent from other exchanges. Further, the Exchange notes that this would be less disruptive to the director election process by permitting any vacancy to be filled at the next scheduled annual stockholder meeting, rather than through an earlier-held special stockholder meeting.

For the reasons stated above, the Commission believes that the proposal is consistent with the requirements of the Act and is designed to enable the Exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply with, and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–BYX–2013–013) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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[19] *Id.*

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69876; File No. SR–EDGA–2013–17]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.5(c), NBBO Offset Peg Order

June 27, 2013.

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 June 24, 2013, 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 self-regulatory organization. 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 proposes to amend Rule 11.5(c), which describes the manner in which the NBBO Offset Peg Order operates. All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects 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 Rule 11.5(c)(15), the NBBO Offset Peg Order, to state that the order type will: (1) Only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered; (2) not be repriced when it would establish the National Best Bid or Offer ("NBBO"); and (3) delay the implementation date of the order type [sic] from April 15, 2013 to no later than October 31, 2013.

On September 25, 2012, the Exchange filed for immediate effectiveness a proposed rule change to adopt the NBBO Offset Peg Order.[3] The NBBO Offset Peg Order will enable Users[4] to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the NBB and NBO, respectively, while providing them full control over order origination and order marking.[5] This retention of control, in turn, is designed to allow Market Makers[6] to comply independently with the requirements of Regulation SHO[7] under the Act and Rule 15c3–5[8] under the Act (the "Market Access Rule"). The Exchange subsequently amended the text of Rule 11.5(c)(15) to remove the ability of Users to cancel or reject NBBO Offset Peg Orders under certain circumstances.[9]

When is a NBBO offset peg order eligible for execution?

First, the Exchange proposes that the NBBO Offset Peg Order will only be eligible for execution once the Market Maker quoting obligations under Rule 11.21(d) are triggered. Currently, Rule 11.5(c)(15) allows Users to submit NBBO Offset Peg Orders at the beginning of the Pre-Opening Session,[10] but states that the order is not executable or automatically priced until the beginning of Regular Trading Hours.[11] However, a Market Maker's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67960 (October 2, 2012), 77 FR 61463 (October 9, 2012) (SR–EDGA–2012–44) (notice of filing and immediate effectiveness of the proposal to adopt the NBBO Offset Peg Order) ("EDGA Adopting Release").

[4] "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." EDGA Rule 1.5(ee).

[5] *See* EDGA Rule 11.5(c)(15).

[6] "Market Maker" is defined as "a Member that acts as a Market Maker pursuant to Chapter XI." EDGA Rule 1.5(l).

[7] 17 CFR 242.200 through 242.204.

[8] 17 CFR 242.15c3–5.

[9] *See* Securities Exchange Act Release No. 68595 (January 7, 2013), 78 FR 2475 (January 11, 2013) (SR–EDGA–2012–47) (notice of filing and immediate effectiveness).

[10] "Pre-Opening Session" is defined as "the time between 8:00 a.m. and 9:30 a.m. Eastern Time." EDGA Rule 1.5(s).

[11] "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." EDGA Rule 1.5(y).