

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-MIAX-2016-40 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-MIAX-2016-40. 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 the 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-MIAX-2016-40 and should be submitted on or before November 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016-26514 Filed 11-2-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79184; File No. SR-BatsEDGX-2016-58]

### Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend EDGX Rule 21.12, Clearing Member Give Up

October 28, 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 19, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend Rule 21.12 in order to codify the requirement that for each transaction in which the User<sup>3</sup> participates, the User must give up the name of the Clearing Member<sup>4</sup> through which the transaction will be cleared ("give up").

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.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> A User is defined as "any Options member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access)." See Exchange Rule 16.1(a)(63).

<sup>4</sup> A Clearing Member is defined as "an Options Member that is self-clearing or an Options Member that clears EDGX Options Transactions for other Members of EDGX Options." See Exchange Rule 16.1(a)(15). An Option Member is defined as "a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of these Rules for purposes of participating in options trading on EDGX Options as an 'Options Order Entry Firm' or 'Options Market Maker.'" See Exchange Rule 16.1(a)(38).

#### 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 is proposing to amend Rule 21.12 (Clearing Member Give Up) to expand upon the procedure related to the "give up" of a Clearing Member by Exchange Users. The Exchange believes that this proposal would result in the fair and reasonable use of resources by both the Exchange and the User. In addition, the proposed change would align the Exchange with competing options exchanges that have adopted rules consistent with this proposal.<sup>5</sup>

###### Background

Under current Exchange rules, Users entering transactions on the Exchange must either be a Clearing Member or must establish a clearing arrangement with a Clearing Member, and must have a Letter of Guarantee issued by a Clearing Member. In addition, under current Rule 21.12, a User must give up the name of the Clearing Member through which each transaction will be cleared. Every Clearing Member accepts financial responsibility for all EDGX Options transactions made by the guaranteed User pursuant to Rule 22.8(b) (Terms of Letter of Guarantee). The Exchange believes the proposed amendment will result in a more structured and coherent streamlined give up process.

<sup>5</sup> See Securities Exchange Act Release Nos. 75642 (August 7, 2015), 80 FR 48594 (August 13, 2015) (SR-NYSEMKT-2015-55) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 961 To Establish Exchange Rules Governing the Give Up of a Clearing Member by Users and Conforming Changes to Rules 960 and 954NY); 72668 (July 24, 2014), 79 FR 44229 (July 30, 2014) (SR-CBOE-2014-048) (Order Approving Proposed Rule Change Relating to the "Give Up" Process, the Process by which a Trading Permit Holder "Gives Up" or Selects and Indicates the Clearing Trading Permit Holder Responsible for the clearance of an Exchange transaction).

### Designated Give Ups and Guarantors

The Exchange proposes to amend Rule 21.12 by replacing the current rule text with details regarding the give up procedure for a User executing transactions on the Exchange. As amended, Rule 21.12 would provide that a User may only give up a Designated Give Up or its Guarantor, as those roles would be defined in the Rule.

Specifically, amended Rule 21.12(b)(1) would define the term Designated Give Up as any Clearing Member that a User (other than a Market Maker<sup>6</sup>) identifies to the Exchange, in writing, as a Clearing Member the User requests the ability to give up. To designate a Designated Give Up, a User must submit written notification to the Exchange, in a form and manner prescribed by the Exchange (“Notification Form”). A copy of the proposed Notification Form is included with this filing in Exhibit 3. Similarly, should a User no longer want the ability to give up a particular Designated Give Up, the User would have to submit written notification to the Exchange, in a form and manner prescribed by the Exchange.

The Exchange notes that, as proposed, a User may designate any Clearing Member as a Designated Give Up, and there would be no maximum number of Designated Give Ups that a User can identify. The Exchange would notify a Clearing Member, in writing and as soon as practicable, of each User that has identified it as a Designated Give Up. The Exchange, however, would not accept any instructions, and would not give effect to any previous instructions, from a Clearing Member not to permit a User to designate the Clearing Member as a Designated Give Up. Further, the Exchange notes that there is no subjective evaluation of a User’s list of proposed Designated Give Ups by the Exchange. Rather, the Exchange proposes to process each list as submitted and ensure that the Clearing Members identified as Designated Give Ups are in fact current Clearing Members, as well as confirm that the Notification Forms are complete and accurate, with emphasis on the accuracy of the Options Clearing Corporation (“OCC”) numbers listed for each Clearing Member.

As amended, Rule 21.12(b)(2) would define the term Guarantor as a Clearing

Member that has issued a Letter of Guarantee for the executing User, pursuant to the Rules of the Exchange<sup>7</sup> that are in effect at the time of the execution of the applicable trade. An executing User may give up its Guarantor without such Guarantor being a Designated Give Up. The Exchange’s Rule 22.8 provides that a Letter of Guarantee is required to be issued and filed by each Clearing Member through which a User clears transactions. Accordingly, a Market Maker would only be enabled to give up a Guarantor that had executed a Letter of Guarantee on its behalf pursuant to Rule 22.8. Thus, Market Makers would not identify any Designated Give Ups. As noted above, amended Rule 21.12 would provide that a User may give up only (i) the name of a Clearing Member that has previously been identified and processed by the Exchange as a Designated Give Up for that User, if not a Market Maker; or (ii) its Guarantor.<sup>8</sup> This proposed requirement would be enforced by the Exchange’s trading systems. Specifically, the Exchange has configured its trading systems to only accept orders from a User that identifies a Designated Give Up or Guarantor for that User, and would reject any order entered by a User that designates a give up that is not at the time a Designated Give Up or a Guarantor of the User.<sup>9</sup> The Exchange notes that it would notify a User in writing when an identified Designated Give Up becomes effective (*i.e.*, when a Clearing Member that has been identified by the User as a Designated Give Up, has been enabled by the Exchange’s trading systems to be given up). A Guarantor for a User, by virtue of having an effective Letter of Guarantee on file with the Exchange, would be enabled to be given up for that User without any further action by the User. The Exchange notes that this configuration (*i.e.*, the trading systems accepting only orders that identify a Designated Give Up or a Guarantor) is intended to help reduce keypunch errors (errors involving erroneous data entry), and prevent the User from mistakenly giving up the name of a Clearing Member that it does not have the ability to give up a trade.

### Acceptance of a Trade

The Exchange proposes in amended Rule 21.12(e) (Acceptance of a Trade) that a Designated Give Up and a

Guarantor may, in certain circumstances, determine not to accept a trade on which its name was given up. If a Designated Give Up or a Guarantor determines not to accept a trade, the proposed Rule would provide that it may reject the trade in accordance with the procedures described more fully below under amended Rule 21.12(f) (Procedures to Reject a Trade). As proposed, a Designated Give Up may determine to not accept a trade on which its name was given up so long as it believes in good faith that it has a valid reason not to accept the trade and follows the procedures to reject a trade in proposed Rule 21.12(f).<sup>10</sup> The Exchange also proposes to provide that a Guarantor may opt to not accept and thereby reject, a non-Market Maker trade on which its name was given up, provided that the following steps are completed: (i) Another Clearing Member agrees to be the give up on the trade (“New Clearing Member”); (ii) the New Clearing Member has notified both the Exchange and executing User in writing of its intent to accept the trade; and (iii) the procedures in proposed Rule 21.12(f) are followed. In addition, the give up must be changed to the New Clearing Member that has agreed to accept the trade in accordance with the procedures in Rule 21.12(f). A Guarantor may not reject a trade given up by a Market Maker. The Exchange notes that only a Designated Give Up or Guarantor whose name was initially given up on a trade is permitted to reject the trade, subject to the conditions noted above. The New Clearing Member or Guarantor that becomes the give up on a rejected trade may not also reject the trade.<sup>11</sup>

### Procedures To Reject a Trade

The Exchange proposes to include in amended Rule 21.12 procedures that must be followed and completed in order for a Designated Give Up or Guarantor to reject a trade. Specifically, a Designated Give Up can only change the give up to (1) another Clearing Member that has agreed to be the give up on the subject trade, provided the New Clearing Member has notified the Exchange and the executing User in writing of its intent to accept the trade in the form and manner prescribed by

<sup>10</sup> An example of a valid reason to reject a trade may be that the Designated Give Up does not have a customer for that particular trade.

<sup>11</sup> A New Clearing Member cannot later reject the trade. Requiring the New Clearing Member to provide notice to the Exchange of its intent to accept the trade and prohibiting the New Clearing Member from later rejecting the trade would provide finality to the trade and ensure that the trade is not repeatedly reassigned from one Clearing Member to another.

<sup>6</sup> For purposes of this rule, Market Maker refers to Options Members acting in the capacity of Market Maker and includes all Exchange Market Maker capacities *e.g.*, Primary Market Makers. As explained below, Market Makers give up Guarantors that have executed a Letter of Guarantee on behalf of the Market Maker, pursuant to Rule 22.8.

<sup>7</sup> See Exchange Rule 22.8 (Letters of Guarantee).

<sup>8</sup> As described below, amended Rule 21.12 (f) provides that a Designated Give Up or Guarantor may, under certain circumstances, reject a trade on which it is given up and another Clearing Member may agree to accept the subject trade.

<sup>9</sup> See *id.*

the Exchange; or (2) a Guarantor for the executing User, provided the Designated Give Up has notified the Guarantor in writing that it is changing the give up on the trade to the Guarantor.<sup>12</sup> Further, as proposed, a Guarantor can only reject a non-Market Maker trade<sup>13</sup> for which its name was the initial give up by a User and change the give up to another Clearing Member that has agreed to be the give up on the subject trade, provided the New Clearing Member has notified the Exchange and the executing User in writing of its intent to accept the trade (by filling out a Give-Up Change Form for Accepting Clearing Member, as described below). A Guarantor that becomes the give up on a trade as a result of the Designated Give Up rejecting the trade is prohibited from not accepting or rejecting the trade. This prohibition would provide finality to the trade and ensure that the trade is not repeatedly reassigned from one Clearing Member to another.

As proposed, a Guarantor may only reject a non-Market Maker trade for which its name was the initial give up by a User if another Clearing Member has agreed to be the give up on the trade and has notified the Exchange and executing User in writing of its intent to accept the trade. If a Guarantor of a User decides to reject a trade on the trade date, it must follow the same procedures to change the give up as would be followed by a Designated Give Up. The ability to make any changes, either by the Designated Give Up or Guarantor, to the give up pursuant to this procedure would end at the Trade Date Cutoff Time, as defined below. Finally, once the give up on a trade has been changed, the Designated Give Up or Guarantor making the change must immediately thereafter notify in writing the Exchange, the parties to the trade and the Clearing Member given up of the change.

#### Rejection on Trade Date

As proposed, a trade may only be rejected on (i) the trade date or (ii) the business day following the trade date (“T+1”) (an exception would be transactions in expiring options series on the last trading day prior to expiration, which may not be rejected on T+1). If, on the trade date, a Designated Give Up decides to reject a trade, or another Clearing Member agrees to be the give up on a trade for which a Guarantor’s name was given up, the Exchange proposes that the rejecting

Designated Give Up or Guarantor must notify, as soon as possible in writing, the executing User or its designated agent, and attempt to resolve the disputed give up. This requirement puts the executing User on notice that the give up on the trade may be changed and provides the executing User and Designated Give Up or Guarantor an opportunity to resolve the dispute. The Exchange notes that a Designated Give Up or Guarantor may request from the Exchange the contact information of the executing User or its designated agent for any trade it intends to reject. Following notification to the executing User on the trade date, a Designated Give Up or Guarantor may request the ability from the Exchange to change the give up on the trade, in a form and manner prescribed by the Exchange (“Give-Up Change Form”). A copy of the proposed Give-Up Change Form is included with this filing in Exhibit 3. Provided that the Exchange is able to process the request prior to the trade input cutoff time established by the OCC (or the applicable later time if the Exchange receives and is able to process a request to extend its time of final trade submission to the OCC) (“Trade Date Cutoff Time”), the Exchange would provide the Designated Give Up or Guarantor the ability to make the change to the give up on the trade to either (1) another Clearing Member or, as applicable, (2) the executing User’s Guarantor.

#### Rejection on T+1

The Exchange acknowledges that some clearing firms may not reconcile their trades until after the Trade Date Cutoff Time. A clearing firm, therefore, may not realize that a valid reason exists to not accept a particular trade until after the close of the trading day or until the following morning. Accordingly, the Exchange proposes to establish a procedure for a Designated Give Up or Guarantor of a User that is not a Market Maker to reject a trade on the following trade day (“T+1”).<sup>14</sup> The Exchange notes that a separate procedure must be established for T+1 changes because to effectively change the give up on a trade on T+1 an offsetting reversal must occur—as opposed to merely identifying a different Clearing Member on the trade. Consistent with amended Rule 21.12(f), a Designated Give Up or

Guarantor<sup>15</sup> that wishes to reject a trade on T+1 would have to notify the executing User in writing, and attempt to resolve the dispute. In addition, a Designated Give Up or Guarantor may contact the Exchange and request the ability to reject the trade on T+1. Provided that the Exchange receives the request prior to 12:00 p.m. Eastern Standard Time on T+1 (“T+1 Cutoff Time”), the Exchange would provide the Designated Give Up or Guarantor the ability to enter trade records into the Exchange’s systems that would effect a transfer of the trade to another Clearing Member. As noted above, if a New Clearing Member agrees to the give up on a trade, it would be required to inform the Exchange of its acceptance via the Give-Up Change Form for Accepting Clearing Members. A Guarantor that becomes the new give up on T+1 would not need to notify the Exchange of its intent to accept the trade, nor would it need to submit any notification or form.

The Designated Give Up however, would be required to provide written notice to the Guarantor that it will be making this change on T+1. The Exchange notes that the ability for either a Designated Give Up or Guarantor to make these changes would end at the T+1 Cutoff Time, and would provide finality and certainty as to which Clearing Member will be the give up on the subject trade. In addition, once any change to the give up has been made, the Designated Give Up or Guarantor making the change would be required to immediately thereafter notify, in writing, the Exchange, the parties to the trade and the Clearing Member given up, of the change. As discussed above, the Exchange proposes to allow Users that are not Market Makers to identify any Clearing Member as a Designated Give Up. The Exchange’s proposal does not permit a Clearing Member to provide the Exchange instructions to prohibit a particular User from giving up the Clearing Member’s name. This limitation prevents the Exchange from being placed in the position of arbiter among the Clearing Member, the User and the customer. The Exchange recognizes, however, that Users should not be given the ability to give up any Clearing Member without also providing a method of recourse to those Clearing Members which, for the prescribed

<sup>12</sup> The Guarantor would not need to notify the Exchange of its intent to accept the trade.

<sup>13</sup> A Guarantor of a User that is a Market Maker may not reject a trade for which its name was given up in relation to such Market Maker.

<sup>14</sup> The Exchange proposes that no changes to the give up on trades in expiring options series that take place on the last trading day prior to their expiration may take place on T+1. Rather, a Designated Give Up or Guarantor may only reject these transactions on the trade date until the Trade Date Cutoff Time in accordance with the trade date procedures described above.

<sup>15</sup> The Exchange again notes that, as proposed, only a Guarantor whose name was initially given up is permitted to reject a trade (*i.e.*, a Guarantor cannot reject a trade on T+1 for which it has become the give up as a result of a Designated Give Up not accepting the trade).

reasons discussed above,<sup>16</sup> should not be obligated to clear certain trades for which they are given up. Accordingly, the Exchange is proposing to provide Designated Give Ups and Guarantors the ability to reject a trade, provided each has a good faith basis for doing so. Ultimately, however, the trade must clear with a clearing firm and there must be finality to the trade. The Exchange believes that the executing User's Guarantor, absent a Clearing Member that agrees to accept the trade, should become the give up on any trade which a Designated Give Up determines to reject in accordance with these proposed rule provisions, because the Guarantor, by virtue of having issued a Letter of Guarantee, has already accepted financial responsibility for all Exchange transactions made by the executing User. The Exchange, however, does not want to prevent a Clearing Member that agrees to accept the trade from being able to do so, and accordingly, the Exchange also provides that a New Clearing Member may become the give up on a trade in accordance with the procedure discussed above.

#### Other Give Up Changes

The Exchange also proposes in Rule 21.12(g) three scenarios in which a give up on a transaction may be changed without Exchange involvement. First, if an executing User has the ability through an Exchange system to do so, it could change the give up on a trade to another Designated Give Up or its Guarantor. The Exchange notes that Users often make these changes when, for example, there is a keypunch error. The ability of the executing User to make any such change would end at the Trade Date Cutoff Time.<sup>17</sup> Next, the modified rule would provide that, if a Designated Give Up has the ability to do so, it may change the give up on a transaction for which it was given up to (i) another Clearing Member affiliated with the Designated Give Up or (ii) a Clearing Member for which the Designated Give Up is a back office agent. The ability to make such a change would end at the Trade Date Cutoff Time. The procedures to reject a trade, as set forth in proposed Rule 21.12(f) and described above, would not apply in these instances. The Exchange notes that often Clearing Members themselves have the ability to change a give up on a trade for which it was given up to another Clearing Member affiliate or

Clearing Member for which the Designated Give Up is a back office agent. Therefore, Exchange involvement in these instances is not necessary. In addition, the proposed rule provides that if both a Designated Give Up or Guarantor and a Clearing Member have the ability through an Exchange system to do so, the Designated Give Up or Guarantor and Clearing Member may each enter trade records into the Exchange's systems on T+1 that would effect a transfer of the trade in a non-expired option series from that Designated Give Up to that Clearing Member. Likewise, if a Guarantor of a User trade (that is not a Market Maker trade) and a Clearing Member have the ability through an Exchange system to do so, the Guarantor and Clearing Member may each enter trade records into the Exchange's systems on T+1 that would effect a transfer of the trade in a non-expired option series from that Guarantor to that Clearing Member. The Designated Give Up or Guarantor could not make any such change after the T+1 Cutoff Time. The Exchange notes that a Designated Give Up or Guarantor must notify, in writing, the Exchange and all the parties to the trade, of any such change made pursuant to this provision. This notification alerts the parties and the Exchange that a change to the give up has been made. Finally, the Designated Give Up or Guarantor would be responsible for monitoring the trade and ensuring that the other Clearing Member has entered its side of the transaction timely and correctly. If either a Designated Give Up (or Guarantor) or Clearing Member cannot themselves enter trade records into the Exchange's systems to effect a transfer of the trade from one to the other, the Designated Give Up (or Guarantor) may request the ability from the Exchange to enter both sides of the transaction in accordance with amended Rule 21.12(g)(3).

#### Responsibility

The Exchange proposes Rule 21.12(h) to state that a Clearing Member would be financially responsible for all trades for which it is the give up at the Applicable Cutoff Time (for purposes of the proposed rule, the "Applicable Cutoff Time" shall refer to the T+1 Cutoff Time for non-expiring option series and to the Trade Date Cutoff Time for expiring option series). The Exchange notes, however, that nothing in the proposed rule shall preclude a different party from being responsible for the trade outside of the Rules of the Exchange pursuant to OCC Rules, any agreement between the applicable parties, other applicable rules and

regulations, arbitration, court proceedings or otherwise.<sup>18</sup> Moreover, in processing a request to provide a Designated Give Up the ability to change a give up on a trade, the Exchange would not consider or validate whether the Designated Give Up has satisfied the requirements of this Rule in relation to having a good faith belief that it has a valid reason not to accept a trade or having notified the executing User and attempted to resolve the disputed give up prior to changing the give up. Rather, upon request, the Exchange would always provide a Designated Give Up or Guarantor the ability to change the give up or to reject a trade pursuant to the proposed Rule so long as the Designated Give Up or Guarantor, and New Clearing Member, if applicable, have provided a completed set of give up Change Forms within the prescribed time period. The Exchange notes that given the inherent time constraints in making a change to a give up on a transaction, the Exchange would not be able to adequately consider the above-mentioned requirements and make a determination within the prescribed period of time. Rather, the Exchange would examine trades for which a give up was changed pursuant to subparagraphs (e) and (f) after the fact to ensure compliance with the requirements set forth in amended Rule 21.12. Particularly, the Exchange notes that the give up Change Forms that Designated Give Ups, Guarantors and New Clearing Members must submit would help to ensure that the Exchange obtains, in a uniform format, the information that it needs to monitor and regulate this Rule and these give up changes in particular. This information, for example, would better allow the Exchange to determine whether the Designated Give Up had a valid reason to reject the trade, as well as assist the Exchange in cross checking and confirming the accuracy of the statements made by the Designated Give Up or Guarantor with its conduct (*e.g.*, check that the New Clearing Member identified in the give up Change Form was the Clearing Member that actually was identified on the trade as the give up). Additionally, the proposed Rule does not preclude these factors from being considered in a different forum (*e.g.*, court or arbitration), nor does it preclude any Clearing Member that

<sup>18</sup> See proposed Interpretation and Policy .01 to Rule 21.12 ("Nothing herein will be deemed to preclude the clearance of Exchange transactions by a non-User pursuant to the By-Laws of the Options Clearing Corporation so long as a Clearing Member who is a User is also designated as having responsibility under these Rules for the clearance of such transactions.").

<sup>16</sup> See *supra* note 12.

<sup>17</sup> After that time, the User would no longer have the ability to make this type of change, as the trade will have been submitted to OCC.

violates any provision of amended Rule 21.12 from being subject to disciplinary actions in accordance with Exchange rules.

#### Implementation

The Exchange proposes to announce the implementation of the proposed rule change effective November 1, 2016.

#### 2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,<sup>19</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>20</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>21</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, detailing in the rules how Users would give up Clearing Members and how Clearing Members may reject a trade provides transparency and operational certainty. The Exchange believes additional transparency removes a potential impediment to, and would contribute to perfecting, the mechanism of a free and open market and a national market system, and, in general, would protect investors and the public interest. Moreover, the Exchange notes that amended Rule 21.12 requires Users to adhere to a standardized process to ensure a seamless administration of the Rule. For example, all notifications relating to a change in give up must be made in writing. The Exchange believes that these requirements will aid the Exchange's efforts to monitor and regulate Users and Clearing Members as they relate to amended Rule 21.12 and changes in give ups, thereby protecting investors and the public interest.

Additionally, the Exchange believes that its proposed give up rule strikes the right balance between the various views and interests of market participants. For example, although the rule allows Users that are not Market Makers to identify any Clearing Member as a Designated Give Up, it also provides that Clearing

Members would receive notice of any User that has designated it as a Designated Give Up and provides for a procedure for a Clearing Member to reject a trade in accordance with the Rules, both on the trade date and T+1.

The Exchange recognizes that Users should not be given the ability to give up any Clearing Members without also providing a method of recourse to those Clearing Members which, for the prescribed reasons discussed above, should not be obligated to clear certain trades for which they are given up. The Exchange believes that providing Designated Give Ups the ability to reject a trade within a reasonable amount of time is consistent with the Act as, pursuant to the proposed rule, the Designated Give Ups may only do so if they have a valid reason and because ultimately, the trade can always be assigned to the Guarantor of the executing User if a New Clearing Member is not willing to step in and accept the trade. A trade must clear with a Clearing Member and there must be finality to the trade. Absent a New Clearing Member that agrees to accept the trade, the Exchange believes that the executing User's Guarantor, should become the give up on any trade that a Designated Give Up determines to reject, in accordance with the proposed rule provisions, because the Guarantor, by virtue of having issued a Letter of Guarantee, has already accepted financial responsibility for all Exchange transactions made by the executing User. Therefore, amended Rule 21.12 is reasonable and provides certainty that a Clearing Member will always be responsible for a trade, which protects investors and the public interest. The Exchange notes that amended Rule 21.12 does not preclude a different party than the party given up from being responsible for the trade outside of the Rules of the Exchange, pursuant to OCC Rules, any agreement between the applicable parties, other applicable rules and regulations, arbitration, court proceedings and otherwise. The Exchange acknowledges that it would not consider whether the Designated Give Up has satisfied the requirements of this Rule in relation to having a good faith belief that it has a valid reason not to accept a trade or having notified the executing User and attempting to resolve the disputed give up prior to changing the give up, due to inherent time restrictions. However, the Exchange believes investor and public interest are still protected as the Exchange will still examine trades for which a give up was changed pursuant to subparagraphs (e) and (f) of amended Rule 21.12 after the

fact to ensure compliance with the requirements set forth in the Rule. As noted above, the implementation of a standardized process and the requirement that certain notices be in writing would assist monitoring any give up changes and enforcing amended Rule 21.12.

Further, the Exchange notes that the Rule does not preclude these factors from being considered in a different forum (e.g., court or arbitration) nor does it preclude any User or Clearing Member that violates any provision of amended Rule 21.12 from being subject to disciplinary actions by the Exchange.

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

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change would impose an unnecessary burden on competition because it would apply equally to all similarly situated Users. The Exchange also notes that, should the proposed changes make the Exchange more attractive for trading, market participants trading on other exchanges can always elect to become Users on the Exchange to take advantage of the trading opportunities. Thus, the proposed rule change will promote competition because it will allow the Exchange to offer its Users similar features as are available at other exchanges and thus further compete with other exchanges for order flow.

#### *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

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

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> *Id.*

19(b)(3)(A)(iii) of the Act<sup>22</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>23</sup> 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.<sup>24</sup> Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>25</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that the proposed rule change is designed to ensure that there will always be a Clearing Member that will be financially responsible for a trade, which should promote greater operational certainty and facilitate cooperation and coordination with persons engaged in clearing transactions. In addition, the Commission believes that the proposal addresses the role of different parties involved in the give up process in a balanced manner and is designed to provide a fair and reasonable methodology for the give up process. The Commission notes that it has considered a substantially similar proposed rule change filed by the Chicago Board Options Exchange, Incorporated (“CBOE”) and NYSE MKT LLC (“NYSE MKT”), which it approved after a notice and comment period.<sup>26</sup> This proposed rule change does not raise any new or novel issues from those considered in the CBOE and NYSE MKT proposals. Based on the foregoing, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative date so that the proposal may take effect upon filing.<sup>27</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>28</sup> to determine whether the proposed rule change 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-2016-58 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-BatsEDGX-2016-58. 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-BatsEDGX-2016-58, and should be

submitted on or before November 25, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016-26512 Filed 11-2-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79183; File No. SR-BatsBZX-2016-30]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, To List and Trade Winklevoss Bitcoin Shares Issued by the Winklevoss Bitcoin Trust

October 28, 2016.

On June 30, 2016, Bats BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade Winklevoss Bitcoin Shares issued by the Winklevoss Bitcoin Trust under BZX Rule 14.11(e)(4). The proposed rule change was published for comment in the **Federal Register** on July 14, 2016.<sup>3</sup>

On August 23, 2016, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On October 12, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission has

<sup>29</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 78262 (Jul. 8, 2016), 81 FR 45554.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 78653, 81 FR 59256 (Aug. 29, 2016). The Commission designated October 12, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 79084, 81 FR 71778 (Oct. 18, 2016) (“Order Instituting Proceedings”). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change’s consistency

<sup>22</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>23</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

<sup>24</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>25</sup> *Id.*

<sup>26</sup> See *supra* note 5.

<sup>27</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>28</sup> 15 U.S.C. 78s(b)(2)(B).