

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. Please include File Number SR-NASDAQ-2016-064 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-NASDAQ-2016-064. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2016-064 and should be submitted on or before June 2, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77780; File No. SR-BatsEDGX-2016-13]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

May 6, 2016.

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 April 29, 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 the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure. Currently, the Exchange provides a \$0.0027 per share rebate under footnote 2 of the Fee Schedule for a Member that adds an ADV⁶ of at least 0.02% of the TCV⁷ in Tape B securities for orders that yield fee codes B and 4.⁸ The Exchange currently has only one Tape B Volume Tier.

The Exchange now proposes to amend the Tape B Volume Tier to add an additional Tape B Volume Tier to provide two Tape B Volume Tiers. The Exchange proposes that the current Tape B Volume Tier be renamed Tape B Volume Tier 1. The Exchange proposes that the rebate and the required criteria for Tape B Volume Tier 1 remain substantively the same as the current Tape B Volume Tier. The Exchange also proposes a second Tape B Volume Tier named "Tape B Volume Tier 2." The Exchange proposes to provide a rebate per share of \$0.0030 pursuant to the Tier and proposes the required criteria to be that a Member adds an ADV of at least 0.15% of the TCV in Tape B securities. To accommodate this proposed change in its Fee Schedule, the Exchange proposes adding an additional row to the Tape B Volume Tier table to list the Tape B Volume Tier 2. The Exchange also proposes adding an additional column to separate Tape B Volume Tier 1 and Tape B Volume Tier 2. Finally, the Exchange proposes stating as a precursor that both Tape B Volume

⁶ As defined on the Exchange's Fee Schedule.

⁷ *Id.*

⁸ See Securities Exchange Act Release No. 76816 (January 4, 2016, 81 FR 987 (January 8, 2016) (SR-EDGX-2015-67).

³¹ 17 CFR 200.30-3(a)(12).

Tiers are applicable to orders yielding fee codes B and 4 and removing the same statement from the current text describing Tape B Volume Tier 1.

Implementation Date

The Exchange proposes to implement this amendment to its Fee Schedule effective May 2, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed amendments to the Tape B Volume Tier are equitable and non-discriminatory in they would apply uniformly to all Members. The Exchange believes the rate remains competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

Volume-based rebates such as that proposed herein have been widely adopted by exchanges, including the Exchange, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposal is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the addition of the proposed second, higher Tape B Volume Tier 2 is a reasonable means to encourage Members to increase the liquidity they provide on the Exchange. Further, Members will still be able to earn the

currently offered rebate under Tape B Volume Tier 1. The addition of a second, higher tier merely incentivizes a Member to provide even greater liquidity. The Exchange further believes that the amendment to the Tape B Volume Tier represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier continue to encourage Members to add displayed liquidity to the EDGX Book¹¹ each month. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange does not believe that the proposed additional tier would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange. The Exchange does not believe the amended tier would burden intramarket competition as it would apply to all Members uniformly. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

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 unsolicited written comments from Members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4 thereunder.¹³ 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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Electronic Comments

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- Send an email to rule-comments@sec.gov. Please include File Number SR-BatsEDGX-2016-13 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-2016-13. 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

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ The EDGX Book is the System's electronic file of orders. See Exchange Rule 1.5(d).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

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-2016-13, and should be submitted on or before June 2, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-11155 Filed 5-11-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34-77782; File Nos. SR-NYSE-2016-14; SR-NYSEArca-2016-25; SR-NYSEMKT-2016-20]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; Order Approving Proposed Rule Change Amending and Restating the Fifth Amended and Restated Bylaws of the Exchanges' Ultimate Parent Company, Intercontinental Exchange, Inc., To Implement Proxy Access

May 6, 2016.

I. Introduction

On March 2, 2016, each of the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca") and NYSE MKT LLC ("NYSE MKT" and, together with NYSE and NYSE Arca, "Exchanges") 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 Fifth Amended and Restated Bylaws ("Bylaws") of the Exchanges' ultimate parent company, Intercontinental Exchange, Inc. ("ICE"),³ to implement proxy access. The proposed rule changes were published for comment in the **Federal**

Register on March 22, 2016.⁴ No comment letters were received in response to the proposals. This order approves the proposed rule changes.

II. Description of the Proposed Rule Changes

The Exchanges propose to amend and restate the Bylaws to add a new Section 2.15 that would, subject to a number of requirements, permit stockholders to nominate director nominees for election to the Board of Directors of ICE ("Board") and require ICE to include such director nominations in its proxy materials for the next annual meeting of stockholders ("Proxy Materials"). The Exchanges further propose to amend certain advance notice provisions in Section 2.13 of the Bylaws to account for the implementation of proxy access in proposed Section 2.15.⁵

Proposed Section 2.15 of the Bylaws

Proposed Section 2.15 of the Bylaws would enable an individual stockholder, or a group of up to 20 stockholders, to nominate director nominees for the Board and have them included in the Proxy Materials, so long as such stockholder or stockholders have collectively owned at least three percent of ICE's outstanding shares of common stock continuously for at least three years.⁶ No stockholder would be permitted to participate in more than one group, and any stockholder appearing as a member of more than one group would be counted as a member of the group with the largest ownership position.⁷ Notwithstanding the foregoing, a stockholder whose nominee is elected to the Board at an annual meeting under proposed Section 2.15 would not be eligible to nominate another candidate for the next two annual meetings.⁸

In order to nominate a director nominee to be included in the Proxy Materials under proposed Section 2.15, a stockholder would need to submit a notice ("Nomination Notice") to the Secretary of ICE, no earlier than the close of business 150 calendar days, and no later than the close of business 120

calendar days, before the anniversary of the date that ICE mailed its Proxy Materials for the previous year's annual meeting.⁹ In proposed Section 2.15, the Exchanges propose to set forth in the Bylaws the specific information that would be needed to be included in the Nomination Notice. The following information is required for the Nomination Notice:

- A Schedule 14N¹⁰ (or any successor form) relating to the nomination, completed and filed with the Commission;¹¹
- a written notice of the nomination¹² containing a statement in support of the nominee's election to the Board, if desired, as well as the following representations and warranties by each nominating stockholder:
 - That the nominating stockholder did not acquire, and is not holding, securities of ICE for the purpose or with the effect of influencing or changing control of ICE;
 - that the nominee's candidacy or, if elected, membership on the Board would not violate applicable state or federal law or the rules of the principal national securities exchange on which ICE's securities are traded;
 - that the nominee does not have any direct or indirect relationship with ICE that will cause the nominee to be deemed not independent under the Board's Independence Policy;¹³
 - that the nominee qualifies as independent under the rules of the principal national securities exchange on which ICE's common stock is traded and meets that exchange's audit

⁹ *Id.* at 2.15(d). If an annual meeting is not scheduled to be held within a period that commences 30 days before and ends 30 days after the anniversary date, the nominating stockholder would be required to submit the Nomination Notice by the later of the close of business 120 days prior to the date of such annual meeting or the tenth day following the first public disclosure of the annual meeting date. *Id.*

¹⁰ 17 CFR 240.14n-101.

¹¹ Proposed Section 2.15(d)(i).

¹² *Id.* at 2.15(d)(ii). The written notice would need to include certain information that is required for the nomination of directors by Section 2.13(b) of the Bylaws and details regarding any relationship in the past three years that would have been described by Item 6(e) of Schedule 14N if that relationship had existed on the date of submission of the Schedule 14N. *Id.* at 2.15(d)(ii)(A) and (B). In the case of a nomination by a group, the notice would also need to include the designation by all group members of one group member authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination. *Id.* at 2.15(d)(ii)(K).

¹³ The Board's current Independence Policy can be found at: <http://ir.theice.com/-/media/Files/ICE-IR/documents/corporate-governance-documents/board-independence-policy.pdf>.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc., which in turn owns 100% of the equity interest in NYSE Holdings LLC. NYSE Holdings LLC owns 100% of the equity interest of NYSE Group, Inc., which owns 100% of the equity interest of each of the Exchanges. ICE is a publicly traded company listed on the NYSE.

⁴ See Securities Exchange Act Release Nos. 77384 (Mar. 17, 2016), 81 FR 15371 (Mar. 22, 2016) (SR-NYSE-2016-14); 77385 (Mar. 17, 2016), 81 FR 15378 (Mar. 22, 2016) (SR-NYSEArca-2016-25); and 77386 (Mar. 17, 2016), 81 FR 15366 (Mar. 22, 2016) (SR-NYSEMKT-2016-20) (collectively, "Notices").

⁵ See Notices, *supra* note 4, for a more detailed description of the proposed amendments.

⁶ Proposed Section 2.15(c)(i)-(iii). Shares may be counted as "owned" only where a stockholder possesses both the full voting and investment rights pertaining to the shares, as well as the full economic interest in such shares. *Id.* at 2.15(c)(iv).

⁷ *Id.* at 2.15(c)(v).

⁸ *Id.* at 2.15(c)(i).