

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-77464; File Nos. SR-BATS-2016-10, SR-BYX-2016-02, SR-EDGX-2016-04, and SR-EDGA-2016-01)

March 29, 2016

Self-Regulatory Organizations; BATS Exchange, Inc., BATS Y-Exchange, Inc., EDGX Exchange, Inc., EDGA Exchange, Inc.; Order Approving Proposed Rule Changes to Amend and Restate the Certificate of Incorporation and Bylaws of the Exchanges' Ultimate Parent Company, BATS Global Markets, Inc.

I. Introduction

On February 9, 2016, BATS Exchange, Inc. (“BATS”), BATS Y-Exchange, Inc. (“BYX”), EDGX Exchange, Inc. (“EDGX”), and EDGA Exchange, Inc. (“EDGA”) (collectively, the “Exchanges” and each, an “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² proposed rule changes to amend the certificate of incorporation (the “Current Certificate of Incorporation”) and bylaws (the “Current Bylaws”) of BATS Global Markets, Inc. (the “Corporation”), the Exchanges' ultimate parent company, in connection with the Corporation's anticipated initial public offering of shares of its common stock on BATS (the “IPO”). The proposed rule changes for EDGX and EDGA were published for comment in the Federal Register on February 22, 2016, and the proposed rule changes for BATS and BYX were published for comment in the Federal Register on February 23, 2016.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 77147 (February 16, 2016), 81 FR 8767 (February 22, 2016) (SR-EDGX-2016-04) (“EDGX Notice”); 77146 (February 16, 2016), 81 FR 8788 (February 22, 2016) (SR-EDGA-2016-01) (“EDGA Notice”); 77155 (February 17, 2016), 81 FR 9008 (February 23, 2016) (SR-BATS-2016-10) (“BATS Notice”); and 77156 (February 17, 2016), 81 FR 9052 (February 23, 2016) (SR-BYX-2016-02) (“BYX Notice”).

The Commission received no comment letters regarding the proposals. This order approves the proposed rule changes.

II. Description of the Proposal

On December 16, 2016, the Corporation filed a registration statement on Form S-1 with the Commission seeking to register shares of common stock and to conduct an initial public offering of those shares, which would be listed for trading on BATS. In connection with the IPO, the Exchanges filed a proposed rule change to amend and restate the Corporation's Current Certification of Incorporation and adopt those changes as the Corporation's Amended and Restated Certificate of Incorporation (the "New Certificate of Incorporation") and amend and restate the Corporation's Current Bylaws and adopt those changes as its Amended and Restated Bylaws (the "New Bylaws"). The Exchanges anticipate that the Corporation's New Certificate of Incorporation and New Bylaws will become effective the moment before the closing of the IPO.⁴ According to the Exchanges, the proposed changes relate to the Corporation's governing documents only and do not relate to the governance of the Exchanges.⁵

A. The New Certificate of Incorporation

1. Capital Stock; Voting Rights

The Exchanges propose to revise the Current Certificate of Incorporation to reclassify all of the Corporation's existing stock as either "Voting Common Stock" or "Non-Voting Common Stock."⁶ The Corporation expects that the outstanding Class A Non-Voting Common Stock will convert into Voting Common Stock upon the IPO, pursuant to the terms of the Investor Rights

⁴ See EDGX Notice, supra note 3, at 8767; EDGA Notice, supra note 3, at 8788; BATS Notice, supra note 3, at 9008; and BYX Notice, supra note 3, at 9053.

⁵ See id.

⁶ See generally proposed Article Fourth of the New Certificate of Incorporation.

Agreement dated January 31, 2014, among the Corporation and its stockholders signatory thereto.⁷ To effect this conversion, the New Certificate of Incorporation states that, at the time that the New Certificate of Incorporation becomes effective, each authorized, issued, and outstanding share of Class A Non-Voting Common Stock shall be automatically converted into one share of Voting Common Stock.⁸ In addition, the New Certificate of Incorporation would reclassify each authorized, issued, and outstanding share of Class B Non-Voting Common Stock into one share of Non-Voting Common Stock.⁹

Except for voting rights¹⁰ and certain conversion features,¹¹ the Exchanges propose that Non-Voting Common Stock and Voting Common Stock would generally rank equally and have identical rights and privileges.¹²

2. Board of Directors

The New Certificate of Incorporation would establish a “staggered” or classified board structure in which the Corporation’s directors would be divided into three classes of equal size, to the extent possible.¹³ Under the proposed board structure, only one class of directors would be elected each year, and once elected, directors would serve a three-year term.¹⁴ Pursuant to the

⁷ See EDGX Notice, supra note 3, at 8768; EDGA Notice, supra note 3, at 8789; BATS Notice, supra note 3, at 9009; and BYX Notice, supra note 3, at 9053.

⁸ See proposed Article Fourth(b)(i) of the New Certificate of Incorporation.

⁹ See proposed Article Fourth(b)(ii) of the New Certificate of Incorporation.

¹⁰ See generally proposed Article Fourth(c) of the New Certificate of Incorporation.

¹¹ See generally proposed Article Fourth(d) of the New Certificate of Incorporation.

¹² See EDGX Notice, supra note 3, 8768; EDGA Notice, supra note 3, at 8789; BATS Notice, supra note 3, at 9009; and BYX Notice, supra note 3, at 9054.

¹³ See proposed Article Sixth(c) of the New Certificate of Incorporation.

¹⁴ Id. Directors initially designated as Class I directors would serve for a term ending on the date of the 2017 annual meeting of stockholders, directors initially designated as Class II directors would serve for a term ending on the date 2018 annual meeting of

New Certificate of Incorporation, cumulative voting in the election of directors would be prohibited.¹⁵ According to the Exchanges, cumulative voting is not appropriate for the ultimate parent company of a national securities exchange because it would increase the likelihood that a stockholder or group of stockholders holding a minority of voting shares might be able to exert an outsized influence in the election of directors of the Corporation, relative to its stockholdings in the Corporation.¹⁶ As a result, the Exchanges state that cumulative voting could undermine the limitations on concentrations of ownership or voting included in both the Current Certificate of Incorporation and New Certificate of Incorporation.¹⁷

3. Transfer, Ownership, and Voting Restrictions

According to the Exchanges, the New Certificate of Incorporation maintains and enhances the limitations on aggregate ownership and total voting power that exist under the Current Certificate of Incorporation.¹⁸ The New Certificate of Incorporation would add that, for purposes of any redemptions of shares purportedly transferred in violation of Article Fifth of the New Certificate of Incorporation, which sets forth the limitations on transfer, ownership and

stockholders, and directors initially designated as Class III directors would serve for a term ending on the date 2019 annual meeting of stockholders. See id.

¹⁵ See proposed Article Sixth(d) of the New Certificate of Incorporation.

¹⁶ See EDGX Notice, supra note 3, at 8769; EDGA Notice, supra note 3, at 8790; BATS Notice, supra note 3, at 9010; and BYX Notice, supra note 3, at 9054-55.

¹⁷ Id.

¹⁸ The New Certificate of Incorporation would maintain the Current Certificate of Incorporation's provisions that impose a 40% ownership limit on the amount of capital stock of the Corporation that any person, either alone or together with its related persons, may own, directly or indirectly, of record or beneficially; impose a 20% ownership limit on the amount of capital stock of the Corporation that any member of the Exchange, either alone, or together with its related persons, may own directly or indirectly, of record or beneficially; and prohibit any person, either alone or together with its related persons, from having or exercising more than 20% of the voting power of the capital stock of the Corporation. See proposed Article Fifth(b)(i) of the New Certificate of Incorporation.

voting, fair market value would be determined as the volume-weighted average price per share of the common stock during the five business days immediately preceding the redemption.¹⁹ The Exchanges state that specifying the manner by which fair market value would be determined would enhance this remedy and provide clarity in the event that it is necessary to enforce this redemption provision.²⁰

4. No Action by Written Consent

The New Certificate of Incorporation would provide that any action required or permitted to be taken at an annual or special meeting of stockholders may be taken only upon the vote of stockholders at an annual or special meeting and may not be taken by written consent of stockholders without a meeting.²¹

5. Future Amendments to the Certificate of Incorporation

The New Certificate of Incorporation would require that certain provisions of the New Certificate of Incorporation may not be repealed or amended in any respect, and no other provision may be adopted, amended or repealed which would have the effect of modifying or permitting the circumvention of such provisions, unless such action is approved by the affirmative vote of at least 66²/₃% of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class.²² The relevant provisions include Article Fourth(c) and (d), relating to voting rights and conversion of Non-Voting Common Stock, and Articles Fifth through Fourteenth, relating to limitations on transfer, ownership and voting, board of directors, duration of the Corporation,

¹⁹ See proposed Article Fifth(e) of the New Certificate of Incorporation.

²⁰ See EDGX Notice, supra note 3, at 8769; EDGA Notice, supra note 3, at 8790; BATS Notice, supra note 3, at 9010; and BYX Notice, supra note 3, at 9055.

²¹ See proposed Article Tenth(c) of the New Certificate of Incorporation.

²² See proposed Article Fourteenth(a) of the New Certificate of Incorporation.

adopting, amending or repealing bylaws, indemnification and limitation of director liability, meetings of stockholders, forum selection, compromise or other arrangement, Section 203 opt-in, and amendments to the certificate of incorporation, respectively.

According to the Exchanges, the purpose of this supermajority requirement, which they believe is common among public companies, is to deter actions being taken that the Corporation believes may be detrimental to the Corporation, including any actions that could detrimentally affect its ability to comply with its unique responsibilities under the Act as the ultimate parent of four registered national securities exchanges.²³ The Exchanges further state that the reason the supermajority voting requirement is applicable only to certain specified provisions of the New Certificate of Incorporation is to focus such requirement on the most critical provisions of the New Certificate of Incorporation.²⁴

6. Other Amendments

According to the Exchanges, the proposal would also amend and restate various other provisions of the Current Certificate of Incorporation in a manner that the Exchanges believe are intended to reflect provisions that are more customary for publicly-owned companies organized under Delaware Law, such as those relating to the Corporation's preferred stock,²⁵ forum selection,²⁶ and Section 203 opt-in,²⁷ among others.²⁸ The New Certificate of Incorporation also

²³ See EDGX Notice, supra note 3, at 8769; EDGA Notice, supra note 3, at 8790; BATS Notice, supra note 3, at 9010; and BYX Notice, supra note 3, at 9055.

²⁴ See EDGX Notice, supra note 3, at 8769; EDGA Notice, supra note 3, at 8790; BATS Notice, supra note 3, at 9010-11; and BYX Notice, supra note 3, at 9055.

²⁵ See proposed Article Fourth (a)(ii) of the New Certificate of Incorporation.

²⁶ See proposed Article Eleventh of the New Certificate of Incorporation.

²⁷ See proposed Article Thirteenth of the New Certificate of Incorporation.

²⁸ See EDGX Notice, supra note 3, at 8770; EDGA Notice, supra note 3, at 8791; BATS Notice, supra note 3, at 9011; and BYX Notice, supra note 3, at 9055-56.

removes various references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, are expected to terminate upon the occurrence of the IPO.²⁹ Finally, the exchanges propose various non-substantive, stylistic or technical changes throughout the New Certificate of Incorporation. For example, the New Certificate of Incorporation would amend the name of the Corporation from “BATS Global Markets, Inc.” to “Bats Global Markets, Inc.”³⁰

B. The New Bylaws

1. Annual Meeting of Stockholders

The Exchanges propose to revise the Current Bylaws to require stockholders to make certain disclosures and representations in notices to the Corporation concerning business proposals and director nominations at annual meetings, and to comply with longer advanced notice requirements.³¹ In addition, the New Bylaws would require that all proposals and nominations comply with applicable requirements of the Act.³² The Exchanges represent that the purpose of the disclosure and representation requirements is to assure that stockholders asked to vote on stockholder proposals or nominations are more fully informed and are able to consider

²⁹ See EDGX Notice, supra note 3, at 8770; EDGA Notice, supra note 3, at 8791; BATS Notice, supra note 3, at 9011; and BYX Notice, supra note 3, at 9056.

³⁰ See id.

³¹ See generally proposed Section 2.02 of the New Bylaws. The New Bylaws would also state that such notice requirements would be satisfied if done in compliance with Exchange Act Rule 14a-8. See proposed Section 2.02(f) of the New Bylaws. Additionally, the New Bylaws would require stockholders to appear at any meeting to present such proposals or nominations. See proposed Section 2.02(d) of the New Bylaws.

³² See proposed Section 2.02(e) of the New Bylaws.

any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.³³

2. Special Meetings of Stockholders

The New Bylaws would only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board.³⁴ According to the Exchanges, this amendment is designed to prevent any stockholder from exercising undue control over the operation of an Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders.³⁵

3. Adjournment of Meetings

The New Bylaws would also provide that only the chairman of the meeting or the board of directors would be permitted to adjourn a stockholder meeting.³⁶ According to the Exchanges, such a requirement is common among publicly-held companies.³⁷ Furthermore, the Exchanges believe that this amendment would provide the Corporation with flexibility to postpone a stockholder vote if it determines it is necessary and would prevent stockholders from adjourning a meeting if the board of directors and chairman desire to continue with the meeting.³⁸

³³ See EDGX Notice, supra note 3, at 8771; EDGA Notice, supra note 3, at 8792; BATS Notice, supra note 3, at 9012; and BYX Notice, supra note 3, at 9057.

³⁴ See proposed Section 2.03 of the New Bylaws.

³⁵ See EDGX Notice, 81 FR at 8771; EDGA Notice, 81 FR at 8792; BATS Notice, 81 FR at 9012; and BYX Notice, 81 FR at 9057.

³⁶ See proposed Section 2.06 of the New Bylaws.

³⁷ See EDGX Notice, supra note 3, at 8772; EDGA Notice, supra note 3, at 8793; BATS Notice, supra note 3, at 9013; and BYX Notice, supra note 3, at 9057.

³⁸ See id.

4. No Action by Written Consent

The Exchanges propose that no action may be taken by written consent of the stockholders without a meeting, subject to the rights of any holders of Preferred Stock.³⁹

5. Number of Directors and Classified Board Structure

Under the New Bylaws, the board of directors would consist of one or more directors, with the exact number of directors to be determined by resolution adopted by the majority of the board of directors.⁴⁰ In addition, the New Bylaws would, consistent with the New Certificate of Incorporation, establish a classified board structure, in which the directors would be divided into three classes of equal size, to the extent possible.⁴¹

6. Removal of Directors

The Current Bylaws provide that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least 66^{2/3} percent of the voting power of all then-outstanding shares of voting stock of the Corporation.⁴² The New Bylaws would provide that directors may only be removed for cause with the affirmative vote of a simple majority of the holders of voting power of all then-outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.⁴³

The Exchanges state that the purpose of this amendment is to align the Corporation's requirements for removal of directors with Delaware Law, which generally provides that, in the

³⁹ See proposed Section 2.10 of the New Bylaws. This revision would be consistent with the New Certificate of Incorporation. See proposed Article Tenth(c) of the New Certificate of Incorporation.

⁴⁰ See proposed Section 3.01 of the New Bylaws.

⁴¹ Id.

⁴² See Section 3.05 of the Current Bylaws.

⁴³ See proposed Section 3.05 of the New Bylaws.

case of a corporation with a classified board, a simple majority of stockholders may remove any director, but only for cause, unless the certificate of incorporation provides otherwise.⁴⁴

7. Future Bylaws Amendments

The New Bylaws would provide that the bylaws may be altered, adopted, amended or repealed either by a majority of the board of directors, or by the stockholders with the affirmative vote of not less than $66\frac{2}{3}$ percent of the total voting power then entitled to vote at a meeting of stockholders voting as a single class.⁴⁵ The Exchanges state that the purpose of this amendment is to be consistent with other publicly-held companies.⁴⁶

In addition to the board of directors and stockholder approval requirements, the New Bylaws would maintain the provisions requiring that, for so long as the Corporation will control a national securities exchange registered with the Commission under Section 6 of the Act, before any amendment to the New Bylaws may become effective, the amendment must be submitted to the board of directors of such exchange, and if required by Section 19 of the Act, filed with or filed with and approved by the Commission.⁴⁷

8. Other Amendments

The New Bylaws make various non-substantive, stylistic or technical changes throughout. For example, the New Bylaws remove references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, is expected to terminate

⁴⁴ See EDGX Notice, supra note 3, at 8772; EDGA Notice, supra note 3, at 8793; BATS Notice, supra note 3, at 9013-14; and BYX Notice, supra note 3, at 9058.

⁴⁵ See proposed Article XI of the New Bylaws.

⁴⁶ See EDGX Notice, supra note 3, at 8773-74; EDGA Notice, supra note 3, at 8794-95; BATS Notice, supra note 3, at 9014-15; and BYX Notice, supra note 3, at 9059-60.

⁴⁷ See proposed Article XI of the New Bylaws.

upon the occurrence of the IPO.⁴⁸ The proposal would also amend and restate various other provisions such as those relating to the registered office of the Corporation,⁴⁹ quorum and vote requirements,⁵⁰ voting rights,⁵¹ organization,⁵² vacancies and resignation of directors,⁵³ board committees,⁵⁴ preferred stock directors,⁵⁵ officers of the Corporation,⁵⁶ form of stock certificates,⁵⁷ transfers of stock,⁵⁸ fixing of record dates,⁵⁹ indemnification,⁶⁰ notices,⁶¹ among others.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶² In particular, the Commission finds that the

⁴⁸ See EDGX Notice, supra note 3, at 8774; EDGA Notice, supra note 3, at 8795; BATS Notice, supra note 3, at 9015; and BYX Notice, supra note 3, at 9060.

⁴⁹ See proposed Section 1.01 of the New Bylaws.

⁵⁰ See proposed Section 2.05 of the New Bylaws.

⁵¹ See proposed Section 2.07 of the New Bylaws.

⁵² See proposed Section 2.11 of the New Bylaws.

⁵³ See proposed Sections 3.03 and 3.04 of the New Bylaws.

⁵⁴ See proposed Section 3.10 of the New Bylaws.

⁵⁵ See proposed Section 3.12 of the New Bylaws.

⁵⁶ See proposed Section 4.01 of the New Bylaws.

⁵⁷ See proposed Section 6.01 of the New Bylaws.

⁵⁸ See proposed Section 6.03(d) of the New Bylaws.

⁵⁹ See proposed Section 6.04 of the New Bylaws.

⁶⁰ See Article X of the Current Bylaws.

⁶¹ See proposed Article X of the New Bylaws.

⁶² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposals are consistent with Section 6(b)(1) of the Act,⁶³ which require a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with the provisions of the Act.

The Commission notes that the Exchanges have represented that the proposed rule changes relate solely to the certificate of the incorporation and bylaws of the Corporation and that each Exchange will continue to be governed by its respective existing certificate of incorporation and bylaws.⁶⁴ BATS and BYX have represented that BATS Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation will continue to directly and solely hold the stock in, and voting power of, BATS and BYX, and BATS and BYX will continue to operate pursuant to its existing governance structure.⁶⁵ EDGA and EDGX have similarly represented that Direct Edge LLC, an intermediate holding company wholly-owned by the Corporation will continue to directly and solely hold the stock in, and voting power of, EDGX and EDGA and, EDGX and EDGA will continue to operate pursuant to its existing governance structure.⁶⁶

The Commission further notes that each Exchange has represented that the proposed rule change will maintain the existing ownership and voting limitations in the Current Certificate of Incorporation.⁶⁷ As a result, the Commission believes that the proposed rule changes should effectively maintain the ownership and voting limits currently in place for the Corporation

⁶³ 15 U.S.C. 78f(b)(1).

⁶⁴ See EDGX Notice, supra note 3, at 8767; EDGA Notice, supra note 3, at 8788; BATS Notice, supra note 3, at 9008; and BYX Notice, supra note 3, at 9053.

⁶⁵ See BATS Notice, supra note 3, at 9008; and BYX Notice, supra note 3, at 9053.

⁶⁶ See EDGX Notice, supra note 3, at 8767; EDGA Notice, supra note 3, at 8788.

⁶⁷ See supra note 18 (discussing the limitations of ownership of capital stock of the Corporation to 40% for any Person and 20% for any member and voting power of capital stock of the Corporation to 20% for any Person).

consistent with Section 6(b)(1) of the Exchange Act. In addition, the Commission notes that each Exchange has represented that it would continue to operate pursuant to its existing governance structure.⁶⁸ The Commission also notes that the Exchanges do not propose any substantive changes to the provision of the Corporation's bylaws relating to SRO functions of the Exchanges.⁶⁹

The Commission, therefore, believes that the proposed rule changes are consistent with Section 6(b)(1) of the Exchange Act, which requires each Exchange to have the ability to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with provisions of the Act, the rules and regulations thereunder, and the rules of such Exchange.⁷⁰

⁶⁸ See EDGX Notice, supra note 3, at 8767; EDGA Notice, supra note 3, at 8788; BATS Notice, supra note 3, at 9008; and BYX Notice, supra note 3, at 9053.

⁶⁹ See proposed Article XII of the New Bylaws.

⁷⁰ 15 U.S.C. 78f(b)(1).

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷¹ that the proposed rule changes (SR-BATS-2016-10, SR-BYX-2016-02, SR-EDGX-2016-04, SR-EDGA-2016-01) be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷²

Robert W. Errett
Deputy Secretary

⁷¹ 15 U.S.C. 78s(b)(2).

⁷² 17 CFR 200.30-3(a)(12).