TD Ameritrade

October 26, 2016

Via Electronic Mail

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: *Bats BZX Exchange, Inc.; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change to Modify the Bats BZX Options Regulatory Fee (File No. SR-BatsBZX-2016-42)*

Dear Mr. Fields:

TD Ameritrade, Inc.[1] ("TD Ameritrade" or "the Firm") appreciates the opportunity to comment on the Bats BZX Exchange, Inc.'s ("BZX") rule filing proposal referenced above. In its proposal, BZX seeks U.S. Securities and Exchange Commission ("Commission") approval to reduce its Options Regulatory Fee ("ORF") from $.0010 per contract side to $.0008 per contract side. In addition, BZX proposes to collect the fee on all options transactions on all options exchanges. While TD Ameritrade understands an exchange's need to fund regulatory operations, the Firm believes that the BZX proposal should prompt Commission to complete an holistic review of the ORF structure across all exchanges to confirm that it continues to be in the best interests of the investing public.[2]

I. <u>Background – Options Regulatory Fee</u>

The ORF was established by the Chicago Board Options Exchange in October 2008 as a replacement for Registered Representative fees.[3] The original fee was $.0045 per contract. Since then, most of the competing options exchanges have initiated their own ORFs, with the fees across all exchanges totaling almost ***ten times*** the original ORF, or $.04 per contract.

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1 TD Ameritrade is a wholly owned broker-dealer subsidiary of TD Ameritrade Holding Corporation ("AMTD"). AMTD has a 40-year history of providing financial services to self-directed investors. TD Ameritrade, provides investing and trading services to 7 million client accounts that total more than $774 billion in assets, and custodial services for more than 5000 independent registered investment advisors. During fiscal year 2016, TD Ameritrade's clients placed an average of 463,000 trades per day.

2 TD Ameritrade supports BZX's proposal to reduce its ORF, but rather is submitting this comment letter to raise larger ORF structure issues to the Commission's attention.

3 *See* Securities Exchange Act Rel. No. 58817 (Oct. 20, 2008).

Options Exchange	ORF Fee
Bats BZX	$.0010
BOX	$.0038
CBOE	$.0081
C2	$.0015
ISE	$.0039
ISE Gemini	$.0010
MIAX	$.0045
NASDAQ BX	$.0004
NASDAQ PHLX	$.0034
NOM	$.0021
NYSE Amex	$.0055
NYSE Arca	$.0055
Total	**$.0407**

ORFs are supposed to be assessed by exchanges on their members. In practice, however, the Options Clearing Corporation ("OCC") acts as billing agent and collects the fee regardless whether a clearing firm is a member of an exchange. In fact, TD Ameritrade Clearing, Inc. ("TD Ameritrade Clearing"), TD Ameritrade's affiliate clearing firm, is assessed an ORF by the BOX Options Exchange LLC, Chicago Board Options Exchange, Inc., C2 Options Exchange LLC, International Securities Exchange, LLC, ISE Gemini, LLC and MIAX Options Exchange even though it is not a member firm of such exchanges, and regardless of where the execution occurs.

TD Ameritrade understands that the general practice by broker-dealers is to pass through the ORF to customers as a transaction fee. While TD Ameritrade does not have access to industry-wide figures, the Firm believes that retail investors are paying tens of millions of dollars each year to the options exchanges via the ORF.

II. <u>The Commission Should Conduct an Overview Review of the ORF</u>

TD Ameritrade submits that the time is ripe for a full review of the ORF. The Firm believes that the Commission's review should encompass the following:

1. There is a lack of consistency among the options exchanges regarding how the ORF is assessed – some exchanges only charge for executions on their exchange, while others charge for all options transactions regardless of where they execute. Since the ORF is intended to fund an exchange's regulatory operations, it makes sense that it should be tied to executions that occur on an exchange, and not executions away from the exchange. Not only does it make sense, the Securities Exchange Act of 1934 ("Exchange Act") requires it. Section 6(b)(4) of the Exchange Act states that "the rules of the exchange provide for the equitable allocation of reasonable dues, fees and other charges among its ***members*** and issuers and ***other persons using its facilities***." (Emphasis added).

2. Options exchanges are for-profit enterprises with fiduciary duties to their shareholders to maximize profits. The ORF is intended to allow the exchanges to cover regulatory costs not as a means to grow profits. There is, however, a complete lack of transparency regarding the amount of ORF collected by options exchanges and what each options exchange incurs in

regulatory costs. The Commission should require the options exchanges to publicly disclose details regarding their regulatory costs and how much they collect in ORF to cover such costs.

3. The current ORF structure, which permits options exchanges to collect fees on executions that occur off exchange, creates the situation in which an options exchange could have little to no market share, but yet collect significant fees. The ORF structure should not incentivize the creation of more options exchanges. Therefore, TD Ameritrade proposes that the Commission not allow exchanges to collect an ORF until they reach 1% market share of total options transaction volume.

4. As noted above, the ORF ranges from $.0004 to $.0081 per contract. A range of this size is not logical and actually highlights why transparency of option exchange fees and costs is so important.

III. <u>Conclusion</u>

TD Ameritrade appreciates the opportunity to comment on the BZX rule proposal. As noted above, the Firm believes that the ORF structure is sorely in need of a comprehensive review. In this regard, the Firm believes that the Commission should review: (1) whether the ORF should be assessed on transactions occurring on an exchange or market-wide; (2) when an exchange can begin collecting an ORF; (3) whether options exchanges can collect the ORF, directly or indirectly, from non-members; and (4) the appropriateness and transparency of exchange funding of regulatory operations along with the amount collected in ORF. In conducting a holistic review, TD Ameritrade believes that it is in the public interest for the Commission to require: (1) options exchanges to collect the ORF from members-only on transactions occurring on their exchange, and only when they reach a certain minimum market share; and (2) increased transparency of option exchange costs and the amount of ORF they collect.

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TD Ameritrade appreciates the opportunity to comment. Please feel free to contact Joseph Kinahan, at [redacted], or John Markle, at [redacted], with any questions regarding our comments.

Respectfully Submitted,

Joseph Kinahan

Joseph Kinahan
Managing Director, Client Advocacy and Market Structure

cc: Stephen Luparello, Director, Division of Trading and Markets
David Shillman, Associate Director, Division of Trading and Markets