

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78061; File No. SR-BatsBZX-2016-22)

June 14, 2016

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees as they Apply to the Equity Options Platform

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 2016, Bats BZX Exchange, Inc. (the “Exchange” or “BZX”) 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 BZX Rules 15.1(a) and (c).

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).

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

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 proposes to modify its fee schedule applicable to the Exchange's equity options platform ("BZX Options") to: (1) modify the standard fee for Customer⁶ orders that remove liquidity in Penny Pilot Securities⁷; (2) modify and delete several tiers pursuant to the Exchange's tiered pricing structure; and (3) modify the Exchange's routing fees, as further described below.

Customer Orders that Remove Liquidity in Penny Pilot Securities

The Exchange is proposing to modify the standard fee for Customer orders that remove liquidity in Penny Pilot Securities. Such orders, when executed on the Exchange, currently yield

⁶ The term "Customer" applies to any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation ("OCC"), excluding any transaction for a Broker Dealer or a "Professional" as defined in Exchange Rule 16.1.

⁷ The term "Penny Pilot Security" applies to those issues that are quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

fee code PC and are assessed a standard fee of \$0.48 per contract. The Exchange is proposing to increase the standard fee for Customer orders that remove liquidity in Penny Pilot Securities from \$0.48 to \$0.49 per contract. In addition to the modification to the Fee Codes and Associated Fees table, the Exchange proposes to update the Standard Rates table of the fee schedule to reflect this change.

Tiered Pricing Changes

The Exchange currently offers multiple tiers that provide either a reduced fee or an enhanced rebate for Members that reach certain volume thresholds. The Exchange proposes various modifications to its tiered pricing structure, as set forth below.

Customer Penny Pilot Add Tiers

Customer orders that add liquidity on the Exchange in Penny Pilot Securities yield fee code PY and receive a standard rebate of \$0.25 per contract. In addition, footnote 1 of the fee schedule currently sets forth eight different types of Customer Penny Pilot Add Tiers, each providing an enhanced rebate to a Member's Customer orders that yield fee code PY upon satisfying monthly volume criteria required by the respective tier.

The Exchange proposes to amend Customer Add Volume Tier 5 to increase the rebate provided and to reduce the qualification criteria for the tier. Specifically, the Exchange proposes to modify Customer Add Volume Tier 5 to provide a rebate of \$0.53 per contract instead of \$0.52 per contract for all executions of orders that yield PY for qualifying Members. In order to qualify for Customer Add Volume Tier 5, the Exchange currently requires a Member to: (1) have an ADAV⁸ in Customer orders equal to or greater than 0.80% of average TCV;⁹ and (2) have an

⁸ "ADAV" means average daily volume calculated as the number of contracts added per day.

ADAV in Market Maker¹⁰ orders equal to or greater than 0.40% of average TCV. In addition to the increase rebate for Customer Add Volume Tier 5, the Exchange proposes to reduce the second prong of the qualifying criteria to require a Member to have an ADAV in Market Maker orders equal to or greater than 0.30% of average TCV.

Pursuant to Customer Add Volume Tier 6, the Exchange currently provides an enhanced rebate of \$0.53 per contract for executions of orders yielding fee code PY where a Member has an ADAV in Customer orders equal to or greater than 1.60% of average TCV. The Exchange proposes to reduce the qualifying criteria for Customer Add Volume Tier 6 and to provide a rebate of \$0.53 for any Member with an ADAV in Customer orders equal to or greater than 1.30% of average TCV.

The Exchange notes that no changes are required to the Standard Rates table of the fee schedule in connection with the changes to footnote 1.

Firm, Broker Dealer and Joint Back Office Penny Pilot Add Volume Tiers

Firm,¹¹ Broker Dealer,¹² and Joint Back Office¹³ orders that add liquidity on the Exchange in Penny Pilot Securities yield fee code PF and receive a standard rebate of \$0.36 per

⁹ “TCV” means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

¹⁰ The term “Market Maker” applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37).

¹¹ The term “Firm” applies to any transaction identified by a Member for clearing in the Firm range at the OCC, excluding any Joint Back Office transaction.

¹² The term “Broker Dealer” applies to any order for the account of a broker dealer, including a foreign broker dealer, that clears in the Customer range at the OCC.

¹³ The term “Joint Back Office” applies to any transaction identified by a Member for clearing in the Firm range at the OCC that is identified with an origin code as Joint Back

contract. In addition, footnote 2 of the fee schedule currently sets forth four different types of Firm, Broker Dealer and Joint Back Office Penny Pilot Add Volume Tiers, each providing an enhanced rebate to a Member's orders that yield fee code PF upon satisfying monthly volume criteria required by the respective tier.

The Exchange proposes to eliminate Firm, Broker Dealer, and Joint Back Office Penny Pilot Add Volume Tiers 1 and 2 under footnote 2, which currently provide Members with rebate of \$0.40 per contract and \$0.42 per contract, respectively, for Firm, Broker Dealer, and Joint Back Office orders that add liquidity in Penny Pilot Securities where the Member meets applicable criteria. In connection with this change, the Exchange proposes to rename Tier 3 under footnote 2 as Tier 1.

In addition to the modifications to footnote 2, the Exchange proposes to update the Standard Rates table of the fee schedule to reflect these changes.

Non-Customer Penny Pilot Take Volume Tiers

Non-Customer¹⁴ orders that remove liquidity from the Exchange in Penny Pilot Securities yield fee code PP and are charged a standard fee of \$0.50 per contract. In addition, footnote 3 of the fee schedule currently sets forth four different types of Non-Customer Penny Pilot Take Volume Tiers, each providing a reduced fee to a Member's Non-Customer orders that yield fee code PP upon satisfying monthly volume criteria required by the respective tier.

The Exchange proposes to eliminate Non-Customer Take Volume Tier 1 under footnote 3, which currently results in a fee to Members of \$0.49 per contract for Non-Customer orders that remove liquidity in Penny Pilot Securities where the Member meets applicable criteria. In

Office. A Joint Back Office participant is a Member that maintains a Joint Back Office arrangement with a clearing broker-dealer.

¹⁴ The term "Non-Customer" applies to any transaction that is not a Customer order.

connection with this change, the Exchange proposes to rename Tier 2 through 4 under footnote 3 as Tiers 1 through 3.

The Exchange also proposes to amend current Non-Customer Take Volume Tier 2 (to be re-numbered as Non-Customer Take Volume Tier 1) to reduce the fee charged to qualifying Members under such tier as well as to reduce the qualification criteria for the tier. Specifically, the Exchange proposes to modify current Non-Customer Take Volume Tier 2 to charge a fee of \$0.44 per contract instead of \$0.47 per contract for all executions of orders that yield fee code PP for qualifying Members. In order to qualify for current Non-Customer Take Volume Tier 2, the Exchange currently requires a Member to: (1) have an ADAV in Customer orders equal to or greater than 0.80% of average TCV; and (2) have an ADAV in Market Maker orders equal to or greater than 0.40% of average TCV. In addition to the reduced fee for current Non-Customer Take Volume Tier 2, the Exchange proposes to reduce the second prong of the qualifying criteria to require a Member to have an ADAV in Market Maker orders equal to or greater than 0.30% of average TCV.

Pursuant to current Non-Customer Take Volume Tier 4 (to be re-numbered as Non-Customer Take Volume Tier 3), the Exchange currently charges a reduced fee of \$0.46 per contract for executions of orders yielding fee code PP where a Member has an ADAV in Customer orders equal to or greater than 1.60% of average TCV. The Exchange proposes to further reduce both the fee and qualifying criteria for current Non-Customer Take Volume Tier 4 to instead charge a fee of \$0.44 per contract for any Member with an ADAV in Customer orders equal to or greater than 1.30% of average TCV.

In addition to the modifications to footnote 3, the Exchange proposes to update the Standard Rates table of the fee schedule to reflect these changes.

Non-Customer Non-Penny Pilot Take Volume Tier

Non-Customer orders that remove liquidity from the Exchange in Non-Penny Pilot Securities¹⁵ yield fee code NP and are charged a standard fee of \$0.99 per contract. In addition, footnote 13 of the fee schedule currently sets forth a Non-Customer Non-Penny Pilot Take Volume Tier that provides a reduced fee of \$0.95 per contract to a Member's Non-Customer orders that yield fee code NP upon satisfying monthly volume criteria required by the tier. The Exchange proposes to eliminate the Non-Customer Non-Penny Pilot Take Volume Tier. Thus, the Exchange proposes to remove footnote 13 in its entirety as well as the reference to footnote 13 appended to fee code NP.

In addition to the elimination of footnote 13, the Exchange proposes to update the Standard Rates table of the fee schedule to reflect this change.

Routing Fees

The Exchange proposes to modify the fees charged for orders routed away from the Exchange and executed at various away options exchanges.¹⁶ The Exchange currently charges flat rate routing fees for executions at away options exchanges that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership

¹⁵ The term "Non-Penny Pilot Security" applies to those issues that are not Penny Pilot Securities quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

¹⁶ Other options exchanges to which the Exchange routes include: Bats EDGX Exchange, Inc. ("EDGX Options"), BOX Options Exchange LLC ("BOX"), Chicago Board Options Exchange, Inc. ("CBOE"), C2 Options Exchange, Inc. ("C2"), International Securities Exchange, Inc. ("ISE"), ISE Gemini, LLC ("ISE Gemini"), ISE Mercury, LLC ("ISE Mercury"), Miami International Securities Exchange, LLC ("MIAX"), Nasdaq Options Market LLC ("NOM"), Nasdaq OMX BX LLC ("BX Options"), Nasdaq OMX PHLX LLC ("PHLX"), NYSE Arca, Inc. ("ARCA"), and NYSE MKT LLC ("AMEX").

fees, etc.) (collectively, “Routing Costs”). To address different fees at various other options exchanges, the Exchange proposes to increase fees applicable to routing to certain away options exchanges in Non-Penny Securities, as further described below.

With respect to Non-Customer orders in Non-Penny Pilot Securities, the Exchange appends fee code RO to all such orders routed to and executed at other options exchanges. Pursuant to fee code RO, the Exchange charges a fee of \$1.20 per contract. The Exchange proposes to increase this fee from \$1.20 per contract to \$1.25 per contract to account for additional Routing Costs incurred by the Exchange.

With respect to Customer orders in Non-Penny Pilot Securities the Exchange applies one of two fee codes: (1) fee code RP, which results in a fee of \$0.25 per contract and applies to all Customer orders (including orders in Penny Pilot Securities) routed to and executed at AMEX, BOX, BX Options, CBOE, EDGX Options, ISE Mercury, MIAX or PHLX; or (2) fee code RR, which results in a fee of \$0.90 per contract and applies to all Customer orders in Non-Penny Pilot Securities routed to and executed at ARCA, C2, ISE, ISE Gemini or NOM. The Exchange proposes to increase the fee under fee code RR from \$0.90 per contract to \$1.00 per contract to account for additional Routing Costs incurred by the Exchange. The Exchange does not propose any change to fee code RP.

As set forth above, the Exchange’s proposed approach to routing fees is to set forth in a simple manner certain flat fees that approximate the cost of routing to other options exchanges. The Exchange then monitors the fees charged as compared to the costs of its routing services, as well as monitoring for specific fee changes by other options exchanges, and intends to adjust its flat routing fees and/or groupings to ensure that the Exchange’s fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area.

The increases are proposed primarily in order to account for increased Routing Costs incurred by the Exchange.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.¹⁷ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange 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 to be excessive.

The Exchange believes that its proposal to change the standard fee charged for Customer orders that remove liquidity in Penny Pilot Securities under fee code PC from \$0.48 to \$0.49 per contract is reasonable, fair and equitable and non-discriminatory, because the change will apply equally to all participants, and because, while the change marks an increase in fees for Customer orders in Penny Pilot Securities, such proposed fees remain consistent with pricing previously offered by the Exchange as well as competitors of the Exchange and does not represent a significant departure from the Exchange's general pricing structure and will allow the Exchange

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(4).

to earn additional revenue that can be used to offset the addition of new pricing incentives, including those introduced as part of this proposal.

Further, the Exchange believes that the proposed modifications to the tiered pricing structure are reasonable, fair and equitable, and non-discriminatory. The Exchange operates in a highly competitive market in which market participants may readily send order flow to many competing venues if they deem fees at the Exchange to be excessive. The proposed fee structure remains intended to attract order flow to the Exchange by offering market participants a competitive pricing structure. The Exchange believes it is reasonable to offer and incrementally modify incentives intended to help to contribute to the growth of the Exchange.

Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by options exchanges 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 the value of an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The proposed modifications to the criteria required to qualify for current Customer Add Volume Tiers 5 and 6 and Non-Customer Take Volume Tiers 2 and 4 are intended to incentivize additional Members to send Customer orders and/or Market Maker orders to the Exchange in an effort to qualify for the enhanced rebate or lower fee made available by the tiers. Similarly, the increase to the rebate provided for Members that qualify for Customer Add Volume Tier 5 and the reduction of the fees charged to Members that qualify for Non-Customer Take Volume Tiers 2 and 4 are intended to incentivize additional Members to send Customer orders and/or Market Maker orders to the Exchange. In order to offset such changes, the Exchange is also eliminating

certain other pricing incentives currently offered by the Exchange. Particularly, the Exchange has proposed to eliminate Non-Customer Take Volume Tier 1, Firm, Broker Dealer, and Joint Back Office Penny Pilot Add Volume Tiers 1 and 2, and the Non-Customer Non-Penny Pilot Take Volume Tier. Although these changes will result in fewer ways to qualify for enhanced rebates or reduced fees, the Exchange believes such changes are offset by the other changes described above, particularly the reduction of certain criteria needed to qualify for remaining tiers.

The proposed changes are broadly intended to incentivize participants to increase their participation on the Exchange, which will increase the liquidity and market quality on the Exchange. Thus, the Exchange believes that the proposed tiers, as proposed to be amended are reasonable, fair and equitable, and non-discriminatory, for the reasons set forth above with respect to volume-based pricing generally and because such changes will incentivize participants to further contribute to market quality. The Exchange also believes that the tiered pricing structure remains consistent with pricing previously offered by the Exchange as well as other options exchanges and does not represent a significant departure from such pricing structures.

With respect to the proposed increases under the Exchange's routing structure, the Exchange again notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive. As explained above, the Exchange seeks to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing, in order to provide a simplified and easy to understand pricing model. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify

fees is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it will provide certainty with respect to execution fees at groups of away options exchanges. In order to achieve its flat fee structure, taking all costs to the Exchange into account, the Exchange will in some instances charge a higher premium to route to certain options exchanges than to others. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges and to make some additional profit in exchange for the services it provides. The Exchange also believes that the proposed increase to the fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members. Finally, the Exchange notes that it intends to consistently evaluate its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit or loss from routing to away options exchanges.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposal is a competitive proposal that is seeking to sustain and further the growth of the Exchange by updating a standard fee as well as the Exchange's tiered pricing structure and updating the Exchange's fees for routing orders to away options exchanges based on Routing Costs.

With respect to the increase to the standard Customer fee to remove liquidity in Penny Pilot Securities, the Exchange does not believe that the increase represents a significant departure

from pricing previously offered by the Exchange nor does the Exchange believe that the increase results in any burden on competition. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

With respect to the proposed tiered pricing changes, the Exchange has structured the proposed fees and rebates to attract additional volume to the Exchange. Particularly, the Exchange is proposing various changes to tiers that will result in increased rebates provided or reduced fees charged or that will make certain tiers more easily attainable for more Members. In order to offset such changes, the Exchange is also eliminating certain other pricing incentives currently offered by the Exchange. Accordingly, the Exchange does not believe that the proposed changes to the Exchange's tiered pricing structure burdens competition, but instead, enhances competition as such changes are all intended to increase the competitiveness of the Exchange. Also, the Exchange believes that the price changes contribute to, rather than burden competition, as such changes are broadly intended to incentivize participants to increase their participation on the Exchange, which will increase the liquidity and market quality on the Exchange, which will then further enhance the Exchange's ability to compete with other exchanges.

With respect to the proposed changes to the routing fee structure, the Exchange believes that the proposed fees are competitive in that they will continue to provide a simple approach to routing pricing that some Members may favor. Additionally, Members may opt to disfavor the Exchange's pricing, including pricing for transactions on the Exchange as well as routing fees, if they believe that alternatives offer them better value. In particular, with respect to routing services, such services are available to Members from other broker-dealers as well as other options exchanges. The Exchange also notes that Members may choose to mark their orders as

ineligible for routing to avoid incurring routing fees.¹⁹

Based on the foregoing, the Exchange does not believe that any of the proposed changes 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 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 Act²⁰ and paragraph (f) of Rule 19b-4 thereunder.²¹ 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.

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:

¹⁹ See Exchange Rule 21.1(d)(7) (describing "Book Only" orders) and Exchange Rule 21.9(a)(1) (describing the Exchange's routing process, which requires orders to be designated as available for routing).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2016-22 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-BatsBZX-2016-22. This file number should be included on the subject line if e-mail 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 website (<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 website 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-BatsBZX-2016-22 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).