

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80050; File No. SR-BatsBZX-2017-13)

February 16, 2017

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

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 February 8, 2017, Bats BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 Members<sup>5</sup> and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c) to amend its Options Regulatory Fee (“ORF”).

---

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> 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.bats.com](http://www.bats.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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the fee schedule applicable to the Exchange’s options platform (“BZX Options”) to amend the rate of its ORF.<sup>6</sup> Currently, the Exchange charges an ORF in the amount of \$0.0010 per contract side. The Exchange proposes to decrease the amount of ORF to \$0.0009 per contract side.<sup>7</sup> The proposed change to ORF should continue to balance the Exchange’s regulatory expenses against the anticipated revenue.

---

<sup>6</sup> The Exchange also proposes to insert a colon after the title “Options Regulatory Fee”.

<sup>7</sup> The Exchange notes that it previously proposed to decrease its ORF of \$0.0008 per contract in August 2016 and to assess ORF to each Member and non-Member for all options transactions cleared by OCC in the “customer” range, regardless of the exchange on which the transaction occurred. See Securities Exchange Act Release No. 78453 (August 1, 2016), 81 FR 51954 (August 5, 2016) (SR-BatsBZX-2016-42). The Exchange then filed to delay the implementation of SR-BatsBZX-2016-42 until February 1, 2017. See Securities Exchange Act Release No. 78746 (September 1, 2016), 81 FR 62225 (September 8, 2016) (SR-BatsBZX-2016-52). The Commission later issued an order suspending and [sic] SR-BatsBZX-2016-42 and instituted proceedings to determine whether to approve or disapprove the proposed rule change asking whether the [sic] “a

The per-contract ORF is assessed by the Exchange on each Member for all options transactions executed and cleared, or simply cleared, by the Member, that are cleared by OCC in the “customer” range, regardless of the exchange on which the transaction occurs. The ORF is collected indirectly from Members through their clearing firms by OCC on behalf of the Exchange. The ORF is also charged for transactions that are not executed by a Member but are ultimately cleared by a Member. Thus, in the case where a non-Member executes a transaction and a Member clears the transaction, the ORF is assessed to the Member who clears the transaction. Similarly, in the case where a Member executes a transaction and another Member clears the transaction, the ORF is assessed to the Member who clears the transaction.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members’ customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange’s other regulatory fees and fines, will continue to cover a material portion, but not all, of the Exchange’s regulatory costs.<sup>8</sup>

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the

---

sufficient regulatory nexus exists between the Exchange and a non-Member to justify imposition of the ORF on such non-Member.” See Securities Exchange Act Release No. 78849 (September 15, 2016), 81 FR 64960 (September 21, 2016). On January 10, 2017, the Exchange withdrew SR-Bats-BZX-2016-42. The Exchange also proposes in this filing to remove text from its fee schedule adopted by SR-BatsBZX-2016-52 which delayed the implementation of SR-BatsBZX-2016-42 until February 1, 2017.

<sup>8</sup> The Exchange notes that its regulatory responsibilities with respect to compliance with options sales practice rules has been allocated to the Financial Industry Regulatory Authority, Inc. (“FINRA”) under a 17d-2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

Exchange's total regulatory costs. The Exchange expects to monitor its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will continue to notify Members of adjustments to the ORF at least 30 calendar days prior to the effective date of the change.<sup>9</sup>

### Implementation Date

The Exchange proposes to implement changes to the ORF immediately.<sup>10</sup>

### 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.<sup>11</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>12</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. The Exchange 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.

---

<sup>9</sup> The Exchange announced the proposed changes to ORF on December 30, 2016. See Bats Options Exchange Regulatory Fee Schedule Update Effective February 1, 2017 available at [http://cdn.batstrading.com/resources/fee\\_schedule/2017/Bats-Options-Exchange-Regulatory-Fee-Schedule-Update-Effective-February-1-2017.pdf](http://cdn.batstrading.com/resources/fee_schedule/2017/Bats-Options-Exchange-Regulatory-Fee-Schedule-Update-Effective-February-1-2017.pdf).

<sup>10</sup> The Exchange originally filed the proposed rule change on January 30, 2017. (SR-BatsBZX-2017-02). On February 8, 2017, the Exchange withdrew SR-BatsBZX-2017-02 and submitted this filing.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes the decreased ORF is equitable and not unfairly discriminatory because it would be objectively allocated to Members in that it would be charged to all Members on all their transactions that clear as customer transactions at the OCC. The Exchange believes that decreasing the ORF is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory revenue collected by the Exchange. The Exchange believes that the proposed adjustment noted herein will serve to continue to balance the Exchange's regulatory revenue against its anticipated regulatory costs. In addition, the Exchange believes the amount of the ORF is reasonable as it is significantly lower than ORFs charged by other exchanges. By way of comparison, MIAX charges an ORF of \$0.0045 per contract side,<sup>13</sup> and both NYSE Arca and NYSE Amex charge an ORF of \$0.0055 per contract side.<sup>14</sup> The CBOE charges an ORF of \$0.0081 per contract.<sup>15</sup>

The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the decreased level of the fee is reasonable and appropriate.

---

<sup>13</sup> See MIAX fee schedule available at [http://www.miaxoptions.com/sites/default/files/MIAX\\_Options\\_Fee\\_Schedule\\_06012016.pdf](http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_06012016.pdf) (dated January 1, 2017).

<sup>14</sup> See NYSE Arca Options fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf) (dated January 1, 2017); and NYSE Amex fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf) (dated January 1, 2017).

<sup>15</sup> See CBOE fee schedule available at [http://www.cboe.com/framed/pdf/framed.aspx?content=/publish/feeschedule/CBOEFeeSchedule.pdf&section=SEC\\_RESOURCES&title=CBOE%20Fee%20Schedule](http://www.cboe.com/framed/pdf/framed.aspx?content=/publish/feeschedule/CBOEFeeSchedule.pdf&section=SEC_RESOURCES&title=CBOE%20Fee%20Schedule) (dated January 3, 2017).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The decreased ORF continues to also be comparable to ORFs charged by other options exchanges.

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 Act<sup>16</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>17</sup> 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:

#### 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](mailto:rule-comments@sec.gov). Please include File No. SR-BatsBZX-2017-13 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 No. SR-BatsBZX-2017-13. 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

---

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

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 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 No. SR-BatsBZX-2017-13, 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.<sup>18</sup>

Eduardo A. Aleman  
Assistant Secretary

---

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