

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80772; File No. SR-BatsBZX-2017-36)

May 25, 2017

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Market Data Section of its Fee Schedule to Adopt Fees for a New Market Data Product Called the ETF Implied Liquidity Feed

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 May 17, 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 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 Market Data section of its fee schedule to adopt fees for a new market data product called the ETF Implied Liquidity Feed.

The text of the proposed rule change is available at the Exchange’s website at www.bats.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).

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 amend the Market Data section of its fee schedule to adopt fees for a new market data product called the ETF Implied Liquidity Feed. The ETF Implied Liquidity feed is an optional data feed that would provide the Exchange’s proprietary calculation of the implied liquidity and the aggregate best bid and offer (“BBO”) of all displayed orders on the Exchange and its affiliated exchanges⁵ for all standard, non-leveraged U.S. equity Exchange Traded Funds (“ETFs”)⁶ traded on the System.⁷ An ETF’s implied liquidity disseminated via the proposed feed would consist of the ETF’s implied BBO (including the implied size) calculated via a proprietary methodology based on the national best bid and offer (“NBBO”), the number of

⁵ The Exchange’s affiliates are Bats EDGA Exchange, Inc., (“EDGA”), Bats EDGX Exchange, Inc. (“EDGX”), and Bats BYX Exchange, Inc. (“BYX”) (“collectively, the “Bats Exchanges”).

⁶ The securities underlying each of the U.S. equity ETFs included in the proposed feed must be considered NMS Securities as defined under Rule 600(b)(46) of Regulation NMS. 17 CFR 242.600(b)(46).

⁷ See Exchange Rule 11.22(n). See also Securities Exchange Act Release No. 80580 (May 3, 2017) (SR-BatsBZX-2017-25) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.22, Data Products, to Adopt a New Market Data Product Known as the ETF Implied Liquidity Feed) (filed April 28, 2017).

shares of securities underlying one creation unit of the ETF, and the estimated cash included in one creation unit of the ETF. The Exchange intends to begin to offer the ETF Implied Liquidity Feed on June 1, 2017.⁸

The Exchange now proposes to amend its fee schedule to adopt fees for the ETF Implied Liquidity Feed. The proposed fees include the following, each of which are described in detail below: (i) Distribution Fees for both Internal and External Distributors;⁹ (ii) Usage Fees for both Professional¹⁰ and Non-Professional¹¹ Users; and (iii) a Data Consolidation fee.

Distribution Fees. As proposed, each Internal and External Distributor that receives the

⁸ See Bats to Introduce ETF Implied Liquidity Feed Effective June 1, 2017, http://cdn.batstrading.com/resources/market_data/2017/Bats-to-Introduce-ETF-Implied-Liquidity-Feed-Effective-June-1-2017.pdf.

⁹ A “Distributor” is defined as “any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.” See the Exchange’s fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/bzx/. An “Internal Distributor” is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.” Id. An “External Distributor” is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.” Id.”

¹⁰ A “Professional User” is defined as “any User other than a Non-Professional User.” See the Exchange’s fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

¹¹ A “Non-Professional User” is defined as “a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.” Id.

ETF Implied Liquidity Feed shall pay a fee of \$5,000 per month.¹² The Exchange proposes to waive certain fees for Distributors that also receive the Bats One Feed.¹³ The ETF Implied Liquidity Feed and the Bats One Feed are similar in that both include the aggregate BBO for all displayed orders on the Bats Exchanges. The key difference here is that the ETF Implied Liquidity Feed also contains the Exchange's proprietary calculation of the ETF's implied liquidity. As such, the Exchange believes it is reasonable to waive certain charges for those Distributors that receive both products. First, the Exchange proposes to waive the Distributor fee for External Distributors of the ETF Implied Liquidity Feed where that External Distributor also receives and is charged the External Distributor fee for the Bats One Feed. The Exchange notes that the proposed External Distribution fee for the ETF Implied Liquidity Feed of \$5,000 per month equals that charged for Bats One Summary. The External Distribution fee for Bats One Premium is higher at \$12,500 per month. Second, the Exchange proposes to waive the related Logical Port fee of \$550 per port per month for both Internal and External Distributors of the ETF Implied Liquidity Feed where they also receive and are charged a Logical Port fee for the Bats One Feed. Distributors would continue to pay the Logical Port fee to receive the Bats One Feed. Lastly, as described below, the Exchange proposes to waive the Data Consolidation fee

¹² A Distributor that acts as both an Internal Distributor and an External Distributor of the ETF Implied Liquidity Feed will be subject to both the Internal Distribution Fee and the External Distribution Fee.

¹³ The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO for securities traded on each of the Bats Exchanges. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the "Bats One Summary Feed"). See Exchange Rule 11.22(j). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order").

for External Distributors of the ETF Implied Liquidity Feed where that External Distributor also receives and is charged the Data Consolidation fee for the Bats One Feed. The Exchange believes waiving the above fees would avoid overlapping charges for Distributors that also receive the Bats One Feed, as both feeds include the aggregated BBO of the Bats Exchanges as a core part of their offering. These Distributors would continue to pay these fees for receipt of the Bats One Feed and are liable for the User fees to be charged for the ETF Implied Liquidity Feed described below.

User Fees. The Exchange proposes to charge External Distributors that redistribute the ETF Implied Liquidity Feed different fees for their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$25.00 per User. Non-Professional Users will be assessed a monthly fee of \$1.00 per User. The Exchange does not propose to charge per User fees to Internal Distributors that receive the ETF Implied Liquidity Feed.

External Distributors that receive the ETF Implied Liquidity Feed will be required to count every Professional User and Non-Professional User to which they provide the ETF Implied Liquidity Feed, the requirements for which are identical to that currently in place for other market data products offered by the Exchange.¹⁴ Thus, the External Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. External Distributors must report all Professional and Non-

¹⁴ See Securities Exchange Act Release Nos. 74285 (February 18, 2015); 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11) (proposing fees for the Bats One Feed); 75406 (July 9, 2015), 80 FR 41522 (July 15, 2015) (SR-BATS-2015-48) (proposing user fees for the BZX Top and Last Sale data feeds); 75785 (August 28, 2015), 80 FR 53360 (September 3, 2015) (SR-BATS-2015-64) (proposing fees for BZX Book Viewer); and 79636 (December 21, 2016), 81 FR 95693 (December 28, 2016) (SR-BatsBZX-2016-87) (proposing fees for BZX Summary Depth).

Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of the ETF Implied Liquidity Feed, the External Distributor must count as one User each unique User that the External Distributor has entitled to have access to the ETF Implied Liquidity Feed. However, where a device is dedicated specifically to a single individual, the External Distributor must count only the individual and need not count the device.
- The External Distributor must identify and report each unique User. If a User uses the same unique method to gain access to the ETF Implied Liquidity Feed, the External Distributor must count that as one User. However, if a unique User uses multiple methods to gain access to the ETF Implied Liquidity Feed (e.g., a single User has multiple passwords and user identifications), the External Distributor must report each of those methods as an individual User.
- External Distributors must report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an External Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count.

Data Consolidation Fee. The Exchange also proposes to charge External Distributors of the ETF Implied Liquidity Feed a separate Data Consolidation Fee of \$500 per month, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the portion of the feed that includes the aggregated BBO of all displayed orders on the Exchange and its affiliated exchanges. The Exchange would provide the aggregate BBO

disseminated via the Bats One Feed as part of the ETF Implied Liquidity feed.¹⁵ The Exchange creates the Bats One Feed, including the aggregated BBO of the Bats Exchanges, by aggregating data derived from the EDGX Depth, EDGA Depth, BYX Depth, and BZX Depth.¹⁶ The Exchange proposes to waive the Data Consolidation fee for External Distributors of the ETF Implied Liquidity Feed where that External Distributor also receives and is charged the Data Consolidation fee for the Bats One Feed. As stated above, the Exchange believes waiving this fee would avoid overlapping charges for Distributors that also receive the Bats One Feed, as both feeds include the aggregated BBO of the Bats Exchanges. In such case, the External Distributor is being charged a \$1,000 Data Consolidation fee for the Bats One Feed, which covers the consolidation function already being performed by the Exchange in constructing the aggregated BBO for the Bats Exchanges. The Exchange, therefore, believes it is reasonable to not charge External Distributors an additional Data Consolidation fee for the same aggregation function performed for the Bats One Feed.

Implementation Date

The Exchange intends to implement the proposed fees on June 1, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4),¹⁸ in particular, as

¹⁵ See Bats One Approval Order, *supra* note 13.

¹⁶ See EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the Bats Exchanges. Rather than these depth-of-book feeds, the Exchange notes that a vendor seeking to build a competing product to the proposed ETF Implied Liquidity feed could simply utilize the top-of-book data feeds from each of the Bats Exchange's to create an aggregated BBO.

¹⁷ 15 U.S.C. 78f.

it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act¹⁹ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,²⁰ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors who subscribe to the ETF Implied Liquidity Feed will be subject to the proposed fees. The ETF Implied Liquidity Feed would be distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are

¹⁸ 15 U.S.C. 78f(b)(4).

¹⁹ 15 U.S.C. 78k-1.

²⁰ 17 CFR 242.603.

required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to the ETF Implied Liquidity Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. For example, the ETF Implied Liquidity Feed provides investors with alternative market data and competes with similar market data product currently offered by other exchanges.²¹ If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to create the ETF Implied

²¹ See Nasdaq Stock Market LLC's ("Nasdaq") Global Index Data Service ("GIDS") available at <http://business.nasdaq.com/intel/indexes/index-data/index.html#!/tcm:5044-12151> (providing on a real-time basis intraday portfolio values, daily valuation information, such as NAV per Share, estimated cash per Share, estimated cash per creation unit, total cash per creation unit and total shares outstanding of the fund and ETF directory messages designed to provide the symbols of the ETF valuations). See footnote 28 of Securities Exchange Act Release No. 77714 (April 26, 2016), 81 FR 26281 (May 2, 2016) (describing Nasdaq's GIDS within the order approving SR-Nasdaq-2016-028). See also footnote 29 of Securities Exchange Act Release No. 78592 (August 16, 2016), 81 FR 56729 (August 22, 2016) (describing Nasdaq's GIDS within the order approving SR-Nasdaq-2016-061). See, e.g., the NYSE Arca, Inc.'s ("NYSE Arca") EOD ETF Report available at <http://www.nyxdata.com/Data-Products/NYSE-Arca-EOD-ETF-Report> (providing information such as the ETF's closing trades and quotes at different key points during the trading day, as well referential information such as shares outstanding, the primary market, and NAV).

Liquidity Feed, prospective Users likely would not subscribe to, or would cease subscribing to the ETF Implied Liquidity Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.²²

Distribution Fee. The Exchange believes that the proposed Distribution Fee is reasonable and equitably allocated in light of alternatives offered by other market centers. The Exchange believes it is reasonable to waive certain charges for those Distributors that receive both the ETF Implied Liquidity Feed and the Bats One Feed as both include the aggregate BBO for all displayed orders on the Bats Exchanges. The key difference here is that the ETF Implied Liquidity Feed also contains the Exchange's proprietary calculation of the ETF's implied

²² The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

liquidity. Waiver of the Distributor fee for External Distributors that also receive and pay the External Distributor for the Bats One Feed is equitable and reasonable because those External Distributors are being charged the External Distributor fees for Bats One, which are currently \$5,000 per month for Bats One Summary and \$12,500 per month for Bats One Premium. The fee waiver here is equitable due to both products providing the same key data element – the aggregated BBO of the Bats Exchanges. While the ETF Implied Liquidity Feed also includes the Exchange’s proprietary calculation of an ETF’s implied liquidity, the Exchange notes that External Distributors of the ETF Implied Liquidity Feed would continue to be subject to the per User fees. Therefore, the Exchange believes it is equitable and reasonable to waive the External Distributor fees in such case. The Exchange further believes that not extending this waiver to Internal Distributors is not unfairly discriminatory as Internal Distributors of the Bats One Feed are not charged User fees like External Distributors.

The Exchange also believes it is equitable and reasonable to waive the related Logical Port fee for both Internal and External Distributors of the ETF Implied Liquidity Feed that also receive and are charged a Logical Port fee for the Bats One Feed. As stated above, both the Bats One Feed and the ETF Implied Liquidity Feed contain the same key data element – the aggregated BBO of the Bats Exchange. The Exchange believes not charging a Logical Port Fee in order to obtain the Exchange’s proprietary calculation of the ETF’s implied liquidity where that Member is currently paying a Logical Port fee to obtain the aggregated BBO of the Bats Exchanges via the Bats One Feed is reasonable. Such Distributors would continue to pay the Logical Port of \$550 per port to receive the Bats One Feed as set forth in the Exchange’s fee schedule.

User Fees. The Exchange believes that implementing the Professional and Non-

Professional User fees for the ETF Implied Liquidity Feed are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for the ETF Implied Liquidity Feed is reasonable because it provides an additional method for retail investors to access the ETF Implied Liquidity Feed data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The Exchange also believes it is not unfairly discriminatory to only charge User fees to External Distributor of the ETF Implied Liquidity Feed as it is those Distributors that redistribute the data to their subscribers for a fee.

The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Bats One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.²³ Offering the ETF Implied Liquidity Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

Data Consolidation Fee. The Exchange believes that the proposed \$500 per month Data Consolidation Fee charged to External Distributors who receive the ETF Implied Liquidity Feed is reasonable because it represents the value of the data aggregation and consolidation function

²³ See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) (“Initial BATS One Feed Fee Filings”). See also, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); and Nasdaq Rules 7023(b) and 7047.

that the Exchange performs. The Exchange also believes it is equitable and reasonable to waive the Data Consolidation fee for External Distributors of the ETF Implied Liquidity Feed where that External Distributor also receives and is charged the Data Consolidation fee for the Bats One Feed. In such case, the External Distributor is being charged a \$1,000 Data Consolidation fee for the Bats One Feed, which covers the consolidation function already being performed by the Exchange in constructing the aggregated BBO for the Bats Exchanges. Therefore, the Exchange believes it is equitable and reasonable to not charge an External Distributor two separate fees for the same function.

The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all External Distributor who subscribe to the ETF Implied Liquidity Feed will be charged the same fee. The Exchange believes it is reasonable and not unfairly discriminatory to not charge Internal Distributor a separate Data Consolidation Fee as instituting such a fee is designed to ensure that a vendor to create a competing product to the Exchange's ETF Implied Liquidity Feed on the same price basis as the Exchange. The proposed fee structure ensures the prices charged for the external distribution of the ETF Implied Liquidity Feed are not lower than the cost a vendor would incur to create a competing product. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable would not permit unfair discrimination.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price the ETF Implied Liquidity Feed is constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF")

that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to the ETF Implied Liquidity Feed ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Lastly, the Exchange represents that the proposed pricing of the ETF Implied Liquidity Feed provides investors with alternative market data and competes with similar market data product currently offered by other exchanges.²⁴ In addition, the pricing is designed to ensure that a vendor to create a competing product to the ETF Implied Liquidity Feed on the same price

²⁴ See supra note 21.

basis as the Exchange. As stated above, the Exchange notes that a vendor seeking to build a competing product to the proposed ETF Implied Liquidity feed could simply utilize the top-of-book data feeds from each of the Bats Exchange's to create an aggregated BBO.²⁵ These top-of-book feeds are EDGA Top, EDGX Top, BYX Top and BZX Top. The Exchange represents that a competing vendor could obtain these top-of-book data feeds from each of the Bats Exchanges on the same latency basis as the system that performs the aggregation and consolidation of the Bats One Summary Feed. While the proposed ETF Implied Liquidity feed does not separately provide the ETF's NBBO, the number of shares of securities underlying one creation unit of the ETF, or the estimated cash included in one creation unit of the ETF, a vendor could obtain this information from the securities information processors and other publicly available sources to perform its own calculation of an ETF's implied liquidity to include as part of a competing product. Therefore, a vendor could create a product to compete with the proposed ETF Implied Liquidity feed on the same terms as the Exchange. The Exchange designed the pricing of this product to enable a vendor to create a competing product to the ETF Implied Liquidity Feed on the same cost basis as the Exchange. The offering of certain fee waivers described herein continues to enable vendors to compete on price as the waivers are only granted where the Distributor is receiving the Bats One Feed and paying the required fees for External Distribution, Logical Ports, and Data Consolidation.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

²⁵ See supra note 16.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁶ and paragraph (f) of Rule 19b-4 thereunder.²⁷ 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. Please include File Number SR-BatsBZX-2017-36 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BatsBZX-2017-36. 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

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

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 Number SR-BatsBZX-2017-36 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.²⁸

Eduardo A. Aleman
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).