

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79273; File No. SR-BatsEDGX-2016-62)

November 9, 2016

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Fees for Use of the Exchange's 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 November 1, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>3</sup> and non-Members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

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.

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

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

<sup>3</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).

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 its fee schedule to specify in new footnote 5 that when Customer<sup>4</sup> orders are submitted with a Designated Give Up, as defined below, the applicable rebates for such orders when executed on the Exchange (yielding fee code NC or PC)<sup>5</sup> are provided to the Member who routed the order to the Exchange.

The Exchange recently amended Rule 21.12 (Clearing Member Give Up) to expand upon the procedure related to the “give up” of a Clearing Member<sup>6</sup> by Users<sup>7</sup> on the Exchange.<sup>8</sup> As amended, Rule 21.12 provides that, in addition to its own Clearing Member (or itself, if the firm is self-clearing), a User may identify to the Exchange a Designated Give Up, as that term is defined in the Rule. Specifically, amended Rule 21.12(b)(1) defines the term Designated Give Up as any Clearing Member that a User (other than a Market Maker<sup>9</sup>) identifies to the Exchange,

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<sup>4</sup> As defined in the Exchange’s fee schedule available at [http://www.bats.com/us/options/membership/fee\\_schedule/edgx/](http://www.bats.com/us/options/membership/fee_schedule/edgx/).

<sup>5</sup> Fee codes NC and PC are appended to Customer orders in Non-Penny Pilot and Penny Pilot Securities, respectively. Id.

<sup>6</sup> A Clearing Member is defined as “an Options Member that is self-clearing or an Options Member that clears EDGX Options Transactions for other Members of EDGX Options.” See Exchange Rule 16.1(a)(15). An Option Member is defined as “a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of these Rules for purposes of participating in options trading on EDGX Options as an ‘Options Order Entry Firm’ or ‘Options Market Maker.’” See Exchange Rule 16.1(a)(38).

<sup>7</sup> A User is defined as “any Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access).” See Exchange Rule 16.1(a)(63).

<sup>8</sup> See Securities Exchange Act Release No. 79184 (October 28, 2016) (SR-BatsEDGX-2016-58).

<sup>9</sup> For purposes of this filing, Market Maker refers to Members acting in the capacity of Market Maker and includes all Exchange Market Maker capacities e.g., Primary Market Makers.

in writing, as a Clearing Member the User requests the ability to give up. With this change, a Member acting as an options routing firm on behalf of one or more other Exchange Members (a “Routing Firm”) is able to route orders to the Exchange and to immediately give up the party (a party other than the Routing Firm itself or the Routing Firm’s own clearing firm) who will accept and clear any resulting transaction. Because the Routing Firm is responsible for the decision to route the order to the Exchange, the Exchange believes that such Member should be provided the rebate when orders that yield fee code NC or PC are executed. In connection with this change, the Exchange proposes to append new footnote 5 to fee codes NC and PC in the Fee Codes and Associated Fees table of the fee schedule.

## 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>10</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</sup> 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 the U.S. options markets are highly competitive, and the proposed fee structure is intended to provide an incentive for Members utilizing the Exchange’s new give up procedure to direct orders to the Exchange. The proposal would only apply to fee codes NC and PC, related to Customer orders, because these are the primary rebates in place on

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<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

the Exchange<sup>12</sup> and reflect the primary liquidity that the Exchange is seeking to attract from Routing Firms that are likely to utilize the give up procedure.

The Exchange believes that the proposed amendments to its fee schedule will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, to the benefit of all Exchange participants. Therefore, the Exchange believes that providing rebates is equitable and reasonable and not unfairly discriminatory as it would allow the Exchange, in the context of the new give up procedure described above, to provide a rebate directly to the party making the routing decision to direct Customer orders to the Exchange (i.e., the Routing Firm), which is consistent with both the Exchange's historic practice and the purpose behind a rebate (i.e., to incentivize the order being directed to the Exchange).

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

The Exchange believes its 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. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange believes that its proposal to incentivize Routing Firms that are utilizing the new give up procedure to direct Customer orders to the Exchange, and will enhance the Exchange's competitive position by resulting in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions.

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<sup>12</sup> The Exchange notes that Market Maker orders yielding fee codes NM and PM do indeed receive rebates to the extent a Member qualifies for Market Maker Volume Tier 6 pursuant to footnote 2 of the fee schedule. The Exchange, however, again notes that Market Makers are expressly excluded from utilizing the give up procedure.

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>13</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>14</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 Number SR-BatsEDGX-2016-62 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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-BatsEDGX-2016-62. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-BatsEDGX-2016-62, 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>15</sup>

Brent J. Fields  
Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).