

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78747; File No. SR-BatsBYX-2016-23)

September 1, 2016

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of Bats BYX Exchange, Inc.

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 August 25, 2016, Bats BYX Exchange, Inc. (the “Exchange” or “BYX”) 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 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 proposed rule change to amend the fee schedule applicable to Members and non-Members<sup>5</sup> of the Exchange pursuant to Exchange Rules 15.1(a) and (c). Specifically, the Exchange proposes to adopt new fee code IX, which would be appended to all orders that are routed to the Investors Exchange, Inc. (“IEX”) using the using the Destination Specific

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

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

<sup>5</sup> A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

(“DIRC”) routing strategy.<sup>6</sup>

The text of the proposed rule change is available at the Exchange’s website at [www.batstrading.com](http://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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved IEX as a registered national securities exchange,<sup>7</sup> which is to begin a symbol-by-symbol roll out of symbols on August 19, 2016.<sup>8</sup> As of that date, the Exchange will begin routing orders to IEX and Members may elect that their orders be routed directly to IEX using the DIRC routing strategy. The Exchange, therefore, proposes to amend its fee schedule to adopt new fee code IX, which would be appended to all orders that are routed to IEX using the DIRC routing strategy. All orders yielding fee code IX will be charged a fee of

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<sup>6</sup> See Exchange Rule 11.13(b)(3)(E).

<sup>7</sup> See Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (“IEX Approval Order”).

<sup>8</sup> See Letter from Brad Katsuyama, CEO, IEX, to IEX’s Sell-Side and Buy-Side Partners, dated June 17, 2016 (<https://www.iextrading.com/>) (stating that IEX will commence a symbol-by-symbol roll-out on August 19, 2016, concluding on September 2, 2016).

\$0.0010 per share.

The proposed change would enable the Exchange to charge a rate reasonably related to the rate that Bats Trading, Inc. (“Bats Trading”), the Exchange’s affiliated routing broker-dealer, would be charged for routing orders to IEX, when it does not qualify for a volume tier reduced fee.<sup>9</sup> As a result, when Bats Trading routes an order to IEX which removes liquidity against a non-displayed order, it will be charged a standard rate of \$0.0009 per share for securities priced at or above \$1.00 and 0.30% of the transaction’s dollar value in securities priced below \$1.00.<sup>10</sup> Bats Trading will not be charged a fee for orders it routes to IEX which remove liquidity against a displayed order.<sup>11</sup> Bats Trading will pass through these rates to the Exchange and the Exchange, in turn, will charge a rate of \$0.0010 per share, regardless of whether the security is priced above or below \$1.00. The Exchange notes it would not be able to control whether the order it routes to IEX executes against displayed or non-displayed liquidity, and therefore, propose to charge a fee for orders that yield fee code IX based on IEX’s rates for removing non-displayed liquidity. The proposed fee under fee code IX would enable the Exchange to equitably allocate its costs among all Members utilizing fee code IX.

The Exchange proposes to implement this amendment to its fee schedule on immediately.<sup>12</sup>

## 2. Statutory Basis

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<sup>9</sup> The Exchange notes that IEX does not currently offer volume tiered pricing.

<sup>10</sup> See IEX fee schedule available at <https://iextrading.com/trading/#fee-schedule> (effective August 19, 2016). See also IEX Trading Alert #2016-036, Investors Exchange Fee Schedule Effective August 19, 2016, available at <https://iextrading.com/trading/alerts/2016/036/>.

<sup>11</sup> Id.

<sup>12</sup> The Exchange filed SR-BatsBYX-2016-22 on August 19, 2016. On August 26, 2016, the Exchange withdrew that filing and submitted this filing.

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>14</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that by allowing customers to route specifically to IEX through Bats Trading, as it does with the other exchanges, fee code IX represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. As of August 19, 2016, IEX will charge a fee of \$0.0009 per share for orders which remove liquidity against non-displayed orders and no fee for orders that remove liquidity against displayed order.<sup>15</sup> Because the Exchange would not be able to control whether the order it routes to IEX executes against displayed or non-displayed liquidity, it therefore, believes it is equitable and reasonable to charge a fee for orders that yield fee code IX based on IEX's rates for removing non-displayed interest. The Exchange further believes that its proposal to pass through a fee of \$0.0010 per share is equitable and reasonable because it accounts for the prices charged by IEX plus the additional operation expenses that would be incurred by the Exchange in routing orders to IEX.<sup>16</sup> Furthermore, the Exchange notes that routing through Bats Trading is voluntary and Members may utilize other

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<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> See supra note 10.

<sup>16</sup> The Exchange notes that, pursuant to fee code J, it charges all order routed to the Nasdaq Stock Market LLC ("Nasdaq") a uniform rate of \$0.0029 per share even though Nasdaq's removal rates differs for securities priced above and below \$1. See Nasdaq's fee schedule available at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>. The Exchange also notes that the proposed rate for fee code IX is lower that its standard routing fee of \$0.0029 per share under fee code X, which it charges, for example, to orders routed to the National Stock Exchange, Inc. ("NSX") which charges a lower rate to remove liquidity. See NSX's fee schedule available at <http://nsx.com/client/pricing> (charging a fee of \$0.0003 per share to orders that remove liquidity).

avenues to route orders to IEX, such as connecting to IEX directly. Lastly, the Exchange also believes that the proposed fee code is non-discriminatory because it applies uniformly to all Members.

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

This proposed rule change does 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 this change represents a significant departure from previous pricing offered by the Exchange or from pricing offered by the Exchange's competitors. The proposed rate would apply uniformly to all Members, and Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal to pass through a fee of \$0.0010 for Members' orders that yield fee code IX would increase intermarket competition by offering customers an alternative means to route to specifically to IEX. As stated above, routing through Bats Trading is voluntary and Members may utilize other avenues to route orders to IEX, such as connecting to IEX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

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>17</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>18</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-BatsBYX-2016-23 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-BatsBYX-2016-23. 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

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</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 Number SR-BatsBYX-2016-23, 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).