

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77524; File No. SR-BatsBZX-2016-04)

April 5, 2016

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for its 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 March 31, 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 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).

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

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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> 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).

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 amend its fee schedule (“Fee Schedule”) for its equity options platform (“BZX Options”) to add the definitions of “Appointed MM” and “Appointed OEF”, effective April 1, 2016, which would increase opportunities for firms to qualify for tiered pricing on BZX Options. Specifically, the Exchange proposes to allow a Market Maker to designate an Order Entry Firm (“OEF”) as its “Appointed OEF” and for an OEF to designate a Market Maker as its “Appointed MM,” for purposes of the Fee Schedule. Members of BZX Options would effectuate such designation by completing and sending an executed Volume Aggregation and Execution Detail Request form by email to the Exchange.<sup>6</sup> As specified in the proposed Fee Schedule, the Exchange would view the transmittal of the completed form as acceptance of such

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<sup>6</sup> See proposed language for “Designating an Appointed OEF/Appointed MM” under “Definitions” section of the Fee Schedule. Members should direct their executed forms to [membershipservices@bats.com](mailto:membershipservices@bats.com).

an appointment.<sup>7</sup> The proposed new concepts would be applicable to all tiered pricing offered by the Exchange, and are designed to increase opportunities for firms to qualify for such tiers.

The Exchange currently offers tiers as described in the footnotes section of the Fee Schedule. Under the current tiers, Members that achieve certain volume criteria may qualify for reduced fees or enhanced rebates for various executions, including executions of Customer<sup>8</sup> and Market Maker<sup>9</sup> orders. In connection with such tiers, the Exchange calculates on a monthly basis a Member's ADV<sup>10</sup> and/or ADAV<sup>11</sup> in the applicable category (e.g., Customer orders or Market Maker orders), as a percentage of average TCV.<sup>12</sup> The Exchange also offers various incentives focused on growth that compare a Member's ADAV as compared to a baseline ADAV established in a prior period (i.e., the Exchange's "step-up" pricing). Upon reaching a volume threshold that qualifies a Member for a specified tier, a Member receives the enhanced rebate or reduced fee associated with the highest tier achieved for each eligible contract executed

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<sup>7</sup> The Exchange further notes that, as proposed, the Exchange would only recognize one such designation for each party once every 12 months, which designation would remain in effect unless or until the Exchange receives written notice from either party indicating that the appointment has been terminated. Id.

<sup>8</sup> 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.

<sup>9</sup> 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).

<sup>10</sup> "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day.

<sup>11</sup> "ADAV" means average daily added volume calculated as the number of contracts per day.

<sup>12</sup> "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, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

on the Exchange. Under the Exchange's current Fee Schedule, a Member is permitted to aggregate volume with other Members that control, are controlled by, or are under common control with such Member. Thus, Members that act as OEFs with affiliated broker-dealers that are Market Makers on the Exchange, and vice-versa, may be able to qualify for certain pricing incentives offered by the Exchange based on such affiliation and aggregation.

The proposal would be available to all Market Makers and OEFs. Specifically, the proposed changes would enable any Market Maker to qualify an Appointed OEF for purposes of volume-based tiers on the Exchange. In this regard, the proposed change would enable a Market Maker without an affiliated OEF – or with an affiliated OEF that doesn't meet the volume requirements for tiered pricing – to enter into a relationship with an Appointed OEF. Similarly, as proposed, an OEF, by virtue of designating an Appointed MM, would be able to aggregate its own Customer volume with the activity of its Appointed MM, which would enhance the OEF's potential to qualify for tiered pricing.<sup>13</sup>

Thus, the proposed changes would enable firms that may not currently be eligible for tiered pricing incentives to avail themselves of such incentives as well as to assist firms that are currently eligible for such incentives to potentially achieve a higher tier, thus qualifying for higher rebates or reduced fees. The Exchange believes these proposed changes would incentivize firms to direct their order flow to the Exchange to the benefit of all market participants. Further, the Exchange believes that the proposed changes would encourage Market Maker firms to

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<sup>13</sup> An OEF that has both an Appointed MM and an affiliated Market Maker may only aggregate volumes with one of these two, not both. Specifically, the Exchange proposes to specify in the definitions section that that “[w]ith prior notice to the Exchange, a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member *or* who have been appointed as an Appointed OEF or Appointed OEF.” See proposed Fee Schedule, “Definitions”, emphasis added.

increase their participation on the Exchange, which would increase capital commitment and liquidity on the Exchange to the benefit of all market participants.

As proposed, the Exchange would only process one designation of an Appointed OEF and Appointed MM per year, which designation would remain in effect unless or until the parties informed the Exchange of its termination.<sup>14</sup> The Exchange believes that this requirement would impose a measure of exclusivity and would enable both parties to rely upon each other's transaction volumes executed on the Exchange, and potentially increase such volumes, which is beneficial to all Exchange participants.

## 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>15</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>16</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 believes that its proposed fees and rebates are reasonable, fair and equitable, and non-discriminatory for the following reasons. First, the proposal would be available to all Market Makers and OEFs and the decision to be designated as an "Appointed OEF" or "Appointed MM" is completely voluntary and Members may elect to accept this

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<sup>14</sup> See supra, note 7.

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

appointment or not. In addition, the proposed changes would enable firms that are not currently eligible for tiered pricing to avail themselves such pricing as well as to assist firms that are currently eligible for such tiers to potentially achieve a higher tier, thus qualifying for higher rebates or lower fees. The Exchange believes these proposed changes would incentivize firms to direct their order flow to the Exchange. Specifically, the proposed changes would enable any Market Maker to qualify its Appointed OEF for purposes of tiered pricing. Moreover, the proposed change would allow any OEF, by virtue of designating an Appointed MM, to aggregate its own volume, including Customer volume, with the activity of its Appointed MM, which would enhance the OEF's potential to qualify for enhanced rebates or reduced fees. The Exchange believes these proposed changes would incentivize Appointed OEFs with an Appointed MM to direct their order flow to the Exchange, which increase in orders routed to the Exchange would benefit all market participants by expanding liquidity and providing more trading opportunities on the Exchange. Similarly, the Exchange believes these proposed changes would incentivize Appointed MMs with an Appointed OEF to increase their participation on the Exchange, which would increase capital commitment and liquidity and decrease spreads on the Exchange to the benefit of all market participants. The Exchange believes that, similar to volume based tiers offered by the Exchange, the benefits of the proposal extend to all market participants based on the increased quality of liquidity on the Exchange, including those market participants that opt not to become an Appointed OEF or Appointed MM.

Further, the Exchange believes that the proposal is reasonable and equitably allocated because it is beneficial to all Exchange participants based on the fact that it enables parties to rely upon each other's transaction volumes executed on the Exchange, and potentially increase such volumes. In turn, as above, the potential increase in order flow, capital commitment and

resulting liquidity on the Exchange would benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads. The proposal is also reasonable, equitable and not unfairly discriminatory because the Exchange would only process one designation of an Appointed OEF and Appointed MM per year, which requirement would impose a measure of exclusivity while allowing both parties to rely upon each other's transaction volumes executed on the Exchange, and potentially increase such volumes, again, to the benefit of all market participants. Finally, the Exchange believes the proposal is reasonable, equitable and not unfairly discriminatory as it may encourage an increase in orders routed to the Exchange, which would expand liquidity and provide more trading opportunities and tighter spreads to the benefit of all market participants, even to those market participants that are either currently affiliated by virtue of their common ownership or that opt not to become an Appointed OEF or Appointed MM under this proposal.

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

The Exchange does not believe that the proposed amendments to its fee schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes are pro-competitive as they would increase opportunities for firms to qualify for tiered pricing on the Exchange, which may increase intermarket and intramarket competition by incenting participants to direct their orders to the Exchange thereby increasing the volume of contracts traded on the Exchange and enhancing the quality of quoting. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider

adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

(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-BatsBZX-2016-04 on the subject line.

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

<sup>18</sup> 17 CFR 240.19b-4(f).

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-2016-04. 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-2016-04 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).