

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78787; File No. SR-BatsBZX-2016-57)

September 8, 2016

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

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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).

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to the Exchange’s options platform (“BZX Options”) to: (i) adopt a new Quoting Incentive Program Tier under footnote 5; and (ii) adopt a new NBBO Setter Tier under footnote 4.

Quoting Incentive Program (“QIP”) Tier 4

The Exchange currently offers three QIP tiers under footnote 5, which provide an additional rebate per contract for orders that add liquidity to the BZX Options Book<sup>6</sup> in options classes in which a Member is a Market Maker<sup>7</sup> registered on BZX Options pursuant to Rule 22.2. The Market Maker must be registered with BZX Options in an average of 20% or more of the

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<sup>6</sup> See Exchange Rule 16.1(a)(9).

<sup>7</sup> “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).

associated options series in a class in order to qualify for QIP rebates for that class. The QIP tiers provide an enhanced rebate ranging from \$0.02 to \$0.05 per contract to qualifying Market Maker orders that yield fee code PM or NM. The Exchange now proposes to add QIP Tier 4 under which a Market Maker may receive an additional rebate of \$0.03 per contract, where the Member has an ADAV<sup>8</sup> in Market Maker orders equal to or greater than 0.40% of average TCV.<sup>9</sup>

#### NBBO Setter Tier

The Exchange currently offers four NBBO Setter tiers under footnote 4, which provide an additional rebate per contract for non-Customer orders that add liquidity and establish a new National Best Bid or Offer (“NBBO”). The NBBO Setter tiers provide an enhanced rebate ranging from \$0.02 to \$0.05 per contract to qualifying non-Customer orders that yield fee code PA, PF, PM, PN, NA, NF, NM or NN. The Exchange now proposes to add a new NBBO Setter Tier 4 under which a non-Customer order may receive an additional rebate of \$0.03 per contract where the Member has an ADAV in Market Maker orders equal to or greater than 0.40% of average TCV. As a result, the current NBBO Setter Tier 4 will be renamed to NBBO Setter Tier 5.

#### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule as of September 1, 2016.

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<sup>8</sup> “ADAV” means average daily added volume calculated as the number of contracts added.

<sup>9</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.

## 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 it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange believes that its proposal to add a new QIP Tier 4 under footnote 5 is reasonable, fair and equitable and non-discriminatory, for the reasons set forth above with respect to volume-based pricing generally. In addition, the Exchange believes the amount of the proposed rebate offered under QIP Tier 4 is equitable and reasonable because it is generally in line with the rebates offered pursuant to QIP Tiers 1 to 3. The Exchange also notes that although

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

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

registration as a Market Maker is required to qualify for QIP, such registration is available to all Members on an equal basis. The Exchange also believes that the proposed tier is reasonable, fair and equitable, and non-discriminatory because it, like the QIP generally, is aimed to incentivize active market making on the Exchange.

The Exchange believes that its proposal to add a new NBBO Setter Tier 4 under footnote 4 is reasonable, fair and equitable and non-discriminatory, for the reasons set forth above with respect to volume-based pricing generally. Similar to the pricing tiers discussed above, this incentive is reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, including liquidity provision and the introduction of higher volumes of orders into the price and volume discovery processes. In particular, the enhanced rebate will encourage Market Maker orders at the NBBO, and is therefore directly focused on encouraging aggressively priced liquidity provision on BZX Options. The proposed differentiation between Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. Market Makers, unlike other market participants, have obligations to the market and regulatory requirements,<sup>12</sup> which normally do not apply to other market participants. A Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with such course of dealings. On the other hand, other market participants do not have such obligations on the Exchange. For the same reasons, the Exchange believes it is reasonable to provide an additional incentive in the form of the proposed new NBBO Setter Tier 4 to Members submitting Market Maker orders.

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<sup>12</sup> See Exchange Rule 22.5, Obligations of Market Makers.

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

The Exchange believes the 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. To the contrary, the Exchange has designed the proposed amendments to its fee schedule in order to enhance its ability to compete with other exchanges. Also, the Exchange believes that the expansion of criteria required to qualify for volume-tiered rebates by the Exchange contributes to rather than burdens competition, as such changes are intended to incentivize participants to increase their participation on the Exchange. Similarly, the introduction of a new QIP and NBBO Setter tier are intended to provide incentives to Market Makers to encourage them to enter orders to the Exchange, and thus is again intended to enhance competition.

Additionally, 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 change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Additionally, 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 to the Exchange's tiered pricing structure burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of the Exchange. Also, the Exchange believes that the price changes contribute to, rather than burden competition, as such changes are broadly intended to incentivize participants to increase their participation on the Exchange, which will increase the liquidity and market quality on the Exchange, which will then further enhance the Exchange's ability to compete with other 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>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-BatsBZX-2016-57 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-BatsBZX-2016-57. 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-2016-57 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).