

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80017; File No. SR-BatsBZX-2017-11)

February 10, 2017

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

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 February 1, 2017, 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 the 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.bats.com](http://www.bats.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 modify its fee schedule applicable to the Exchange's equities platform to add a new footnote 19, entitled "NBBO Setter Tiers." Under the proposed new tiers, orders that establish a new National Best Bid or Offer ("NBBO") and which are appended with fee code B, V or Y, would receive an additional rebate ranging from \$0.0001 to \$0.0004 per share. The Exchange proposes to add three NBBO Setter Tiers, as set forth below.

- Tier 1 would provide an additional rebate of \$0.0001 in qualifying orders where a Member has a Setter Add TCV<sup>6</sup> of at least 0.05%.

- Tier 2 would provide an additional rebate of \$0.0002 in qualifying orders where a Member has a Setter Add TCV of at least 0.10%.

- Tier 3 would provide an additional rebate of \$0.0004 in qualifying orders where a Member has a Setter Add TCV of at least 0.15%.

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<sup>6</sup> As defined in the Exchange's fee schedule. The Exchange notes that this definition has remained in place on the fee schedule since the previous period during which the Exchange offered NBBO Setter incentives. See *infra*, note 7 and accompanying text.

The Exchange also proposes to update the Fee Codes and Associated Fees table accordingly, appending footnote 19 to Fee Codes B, V and Y.

The Exchange notes that the proposed the NBBO Setter Tiers are additive rebates, and thus, can be combined with other incentives and structures offered by the Exchange. For instance, while the standard rebate for an execution yielding fee code V is \$0.0020 per share, a Member with an ADAV<sup>7</sup> of 0.10% (but less than 0.20%) as a percentage of TCV,<sup>8</sup> would qualify for Add Volume Tier 1 under footnote 1, and would instead receive an enhanced rebate of \$0.0025 per share. If such Member also had a Setter Add TCV of at least 0.05% (but less than 0.10%), such Member would also qualify for NBBO Setter Tier 1 and would receive a total rebate of \$0.0026 per share (representing the original, enhanced rebate of \$0.0025 per share plus the \$0.0001 additional incentive).

The Exchange notes that it previously has offered NBBO Setter Tiers (as well as an NBBO “Joiner Tier” for orders that did not set but joined the NBBO), but eliminated these tiers effective May 1, 2015.<sup>9</sup> The Exchange is now proposing to re-introduce these incentives to encourage Members to contribute to market quality on the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges

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<sup>7</sup> As defined in the Exchange’s fee schedule.

<sup>8</sup> As defined in the Exchange’s fee schedule.

<sup>9</sup> See Securities Exchange Act Release No. 74938 (May 12, 2015), 80 FR 28322 (May 18, 2015) (SR-BATS-2015-35).

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

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

among its Members and other persons using its facilities. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members that qualify. The Exchange believes the proposed rebates are competitive with those provided by other venues and therefore continue to be reasonable and equitably allocated to Members. 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.

In particular, the Exchange believes the adoption of the NBBO Setter Tiers under footnote 19 is a reasonable means to encourage Members to not only increase their liquidity on the Exchange but also to contribute to the market quality of the Exchange by offering aggressively priced liquidity. The Exchange further believes that the proposed tiers represent an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tiers encourage Members to add additional liquidity to the Exchange. The Exchange further believes that the NBBO Setter Tiers are not unreasonably discriminatory as they are equally available to all Members.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed tiers will impose an undue burden on competition because the Exchange will uniformly offer the additional rebates to all qualifying Members. In

fact, the Exchange believes the proposed tiers enhance competition, as they are intended to increase the competitiveness of and draw additional volume to the Exchange. Further, the Exchange believes the proposed tiers enhance competition because they are intended to incentivize Members to submit aggressively price liquidity to the Exchange. The Exchange does not believe that the proposed change represents a significant departure from the Exchange's current pricing structure, but instead, is merely another incentive offered by the Exchange to encourage Members to contribute to the growth of the Exchange. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

B. 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 unsolicited 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>12</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>13</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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

#### 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 No. SR-BatsBZX-2017-11 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 No. SR-BatsBZX-2017-11. 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 No. SR-BatsBZX-2017-11, 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>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).