

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80629; File No. SR-BatsBZX-2017-29)

May 9, 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 the Exchange's Equity Options Platform

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 1, 2017, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") 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 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 Members⁵ and non-members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ 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).

The text of the proposed rule change is available at the Exchange's website at www.bats.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 amend its fee schedule for its equity options platform ("BZX Options") to: (i) decrease the standard rebate provided by fee code PF; and (ii) amend certain (A) Customer Penny Pilot Add Tiers under footnote 1; (B) Quoting Incentive Program ("QIP") Tiers under footnote 5; and (C) Customer Non-Penny Pilot Add Volume Tiers under footnote 12.

Fee Code PF

Currently, fee code PF provides a standard rebate of \$0.26 per contract for Firm,⁶ Broker Dealer⁷ and Joint Back Office⁸ orders that add liquidity on the Exchange in Penny-Pilot

⁶ "Firm" applies to any transaction identified by a Member for clearing in the Firm range at the OCC, excluding any Joint Back Office transaction. See the Exchange's fee schedule available at http://www.bats.com/us/options/membership/fee_schedule/bzx/.

⁷ "Broker Dealer" applies to any order for the account of a broker dealer, including a foreign broker dealer, that clears in the Customer range at the Options Clearing Corporation ("OCC"). Id.

securities.⁹ The Exchange proposes to reduce this rebate [sic] to \$0.25 per contract. The Exchange also proposes to update the Standard Rates table accordingly to reflect new rate.

Customer Penny Pilot Add Tiers

The Exchange currently offers seven Customer¹⁰ Penny Pilot Add Tiers under footnote 1, which provide an enhanced rebate ranging from \$0.40 to \$0.53 per contract for qualifying Customer orders that add liquidity in Penny Pilot Securities and yield fee code PY. The Exchange now proposes to modify Tier 3' [sic] required criteria and rebates [sic] well as to add new Tier 7.

- Currently under Tier 3, a Member may receive a rebate of \$0.50 per contract where they have an ADV¹¹ greater than or equal to 1.30% of average OCV.¹² As amended, a Member may receive a rebate of \$0.51 per contract where they have an: (i) ADAV¹³ in Customer orders greater than or equal to 0.50% of average

⁸ "Joint Back Office" applies to any transaction identified by a Member for clearing in the Firm range at the OCC that is identified with an origin code as Joint Back Office. A Joint Back Office participant is a Member that maintains a Joint Back Office arrangement with a clearing broker-dealer. Id.

⁹ "Penny Pilot Securities" are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01. Id.

¹⁰ "Customer" applies to any transaction identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a "Professional" as defined in Exchange Rule 16.1. Id.

¹¹ "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day. See the Exchange's fee schedule available at http://www.bats.com/us/options/membership/fee_schedule/bzx/.

¹² "OCV" means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") 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. Id.

¹³ "ADAV" means average daily added volume calculated as the number of contracts added and "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day. Id.

OCV; and (ii) ADAV in Market Maker¹⁴ orders greater than or equal to 2.75% of average OCV.

- Under proposed Tier 7, a Member would receive a rebate of \$0.53 per contract where they have an: (i) ADAV in Customer orders greater than or equal to 0.50% of average OCV; (ii) ADAV in Market Maker orders greater than or equal to 2.75% of average OCV; and (iii) ADAV in Firm orders in Non-Penny Pilot Securities greater than or equal to 0.05% of average OCV.

QIP Tiers

The Exchange currently offers four QIP Tiers under footnote 5, which provide an additional rebate ranging from \$0.02 to \$0.05 per contract for qualifying Market Maker orders that add liquidity in: (i) Penny Pilot Securities that yield fee code PM and; (ii) Non-Penny Pilot Securities that yield fee code NM. The additional rebate per contract is for an order that adds liquidity to the BZX Options in options classes in which a Member is a Market Maker registered pursuant to Exchange Rule 22.2. A Market Maker must be registered with BZX Options in an average of 20% or more of the associated options series in a class in order to qualify for QIP rebates for that class. The Exchange now proposes to delete the current Tier 2 and to decrease the rebate Tier 3 and renumber it as Tier 2.

- Under the current Tier 2, a Member may receive an additional rebate of \$0.04 per contract where they have an ADV greater than or equal to 1.30% of average OCV. The Exchange proposes to delete Tier 2.
- Under Tier 3, a Member may receive an additional rebate of \$0.05 per contract

¹⁴ “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). Id.

where they have an ADV in greater than or equal to 3.25% of average OCV. The Exchange proposes to decrease the rebate provided by Tier 3 from \$0.05 per contract to \$0.04 per contract. The Exchange also proposes to renumber Tier 3 as Tier 2 to reflect the above deletion of the current Tier 2.¹⁵

Customer Non-Penny Pilot Add Volume Tiers

The Exchange currently offers two Customer Non-Penny Pilot Add Volume Tiers under footnote 12, which provide an enhanced rebate of \$1.00 or \$1.05 per contract for qualifying Customer orders which add liquidity in Non-Penny Pilot Securities and yield fee code NY. The Exchange proposes to add two new Customer Non-Penny Pilot Add Volume Tiers under footnote 12.

- Under the newly proposed Tier 1, a Member would receive a rebate of \$0.92 per contract where they have an: (i) ADAV in Customer orders greater than or equal to 0.50% of average OCV; and (ii) ADAV in Market Maker orders greater than or equal to 2.75% of average OCV. In connection with this change, the Exchange proposes to renumber current Tier 1 as Tier 2.. [sic] The Exchange also proposes to update the Standard Rates table accordingly to reflect new rebate.
- Under the newly proposed Tier 3, a Member may receive a rebate of \$1.02 per share where they have an: (i) ADAV in Customer orders greater than or equal to 0.50% of average OCV; (ii) an ADAV in Market Maker orders greater than or equal to 2.75% of average OCV; and (iii) an ADAV in Firm, Non-Penny orders greater than or equal to 0.05% of average OCV. In connection with this change and the addition of new Tier 1 described above, the Exchange proposes to

¹⁵ The Exchange also proposes to renumber Tier 4 as Tier 3 to reflect the above deletion of the current Tier 2.

renumber current Tier 2 as Tier 4.. [sic] The Exchange also proposes to update the Standard Rates table accordingly to reflect new rebate.

Implementation Date

The Exchange proposes to implement the above changes to its fee schedule on May 1, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(4),¹⁷ 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 also 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 at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange.

Fee Codes PF

The Exchange believes that its proposal to reduce the rebate provided by fee code PF is fair and equitable and reasonable because the proposed rebate remains consistent with pricing previously offered by the Exchange as well as its competitors and does not represent a significant departure from the Exchange's general pricing structure. Specifically, the lower rebate to \$0.25 per contract for Firm, Broker Dealer and Joint Back Office orders which add liquidity in Penny Pilot Securities under fee code PF is identical to NYSE Arca, Inc. ("NYSE Arca"), which

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

provides a standard rebate of \$0.25 per contract for similar orders.¹⁸ Lastly, the proposed change to fee code PF is not unfairly discriminatory because it will apply equally to all Members.

Tier Modifications

The Exchange believes that the proposed modifications to the tiered pricing structure are reasonable, fair and equitable, and non-discriminatory. The Exchange operates in a highly competitive market in which market participants may readily send order flow to many competing venues if they deem fees at the Exchange to be excessive or incentives provided to be insufficient. The proposed structure remains intended to attract order flow to the Exchange by offering market participants a competitive pricing structure. The Exchange believes it is reasonable to offer and incrementally modify incentives intended to help to contribute to the growth of the Exchange.

Volume-based pricing such as that proposed herein have been widely adopted by exchanges, including the Exchange, 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: (i) the value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provisions and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. In particular, the proposed changes to footnotes 1, 5, and 12 are intended to further incentivize Members to send increased order flow to the Exchange in an effort to qualify for the enhanced rebates made available by the tiers, in turn contributing to the growth of the Exchange. The proposed changes to the tiered pricing structure are not unfairly discriminatory because they will apply equally to all Members.

¹⁸ See the NYSE Arca fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

Lastly, the Exchange believes that eliminating Tier 2 under footnote 5 is reasonable, fair, and equitable because this tier was not providing the desired result of incentivizing Members to increase their participation on the Exchange. As such, the Exchange also believes that the proposed elimination of this tier would be non-discriminatory in that it currently applies equally to all Members and, upon elimination, would no longer be available to any Members. Further, its elimination could allow the Exchange to explore other pricing mechanisms such as those described herein, in which it may enhance market quality for all Members.

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

The Exchange believes the proposed amendment 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 changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. 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 will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that the proposed changes to the Exchange's standard fees, rebates and tiered pricing structure burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of the Exchange.

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 Act¹⁹ and paragraph (f) of Rule 19b-4 thereunder.²⁰ 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. Please include File Number SR-BatsBZX-2017-29 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BatsBZX-2017-29. 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

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

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-BatsBZX-2017-29 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.²¹

Eduardo A. Aleman
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).