

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78112; File No. SR-BatsEDGX-2016-23)

June 21, 2016

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

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 June 8, 2016, Bats EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 EDGX Rules 15.1(a) and (c) (“Fee Schedule”) to add fee codes NA and NB.

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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).

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 Exchange previously filed a proposed rule change with the Commission to include a Non-Displayed<sup>6</sup> instruction on orders routed to an away Trading Center.<sup>7</sup> The Exchange intends to implement this functionality on June 1, 2016.<sup>8</sup> Because other Trading Centers typically provide different rebates or fees with respect to non-displayed liquidity the Exchange proposes to amend its Fee Schedule to add fee codes NA and NB, which would apply to orders routed with a

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<sup>6</sup> See Exchange Rule 11.6(e)(2).

<sup>7</sup> The Exchange notes that the Exchange also amended its rules to route orders with a Reserve Quantity (as defined in Rule 11.6(m)) as such to other Trading Centers. See Securities Exchange Act 77189 (February 19, 2016), 81 FR 9571 (February 25, 2016) (SR-EDGX-2016-08). Orders to be routed with a Non-Displayed instruction or a Reserve Quantity would be handled in accordance with the rules of the Trading Center to which they are routed. *Id.* This proposal does not impact orders routed with a Reserve Quantity.

<sup>8</sup> See Bats Announces Support for Hidden Post-to-Away Routed Orders, available at [http://cdn.batstrading.com/resources/release\\_notes/2016/Bats-Announces-Support-for-Hidden-Post-to-Away-Routed-Orders.pdf](http://cdn.batstrading.com/resources/release_notes/2016/Bats-Announces-Support-for-Hidden-Post-to-Away-Routed-Orders.pdf).

Non-Displayed instruction. Proposed fee code NA would be applied to orders that include a Non-Displayed instruction that are routed to and add liquidity on Bats BZX Exchange, Inc. (“BZX”), the New York Stock Exchange, Inc. (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), NYSE MKT LLC (“NYSE MKT”), or the Nasdaq Stock Market LLC (“Nasdaq”).<sup>9</sup> Orders that yield fee code NA would not be charged a fee nor receive a rebate in both securities priced at or above \$1.00 or below \$1.00. Proposed fee code NB would be applied to orders that include a Non-Displayed instruction and are routed to and add liquidity on any exchange not listed in proposed fee code NA. Orders that yield fee code NB would be charged a fee of \$0.0030 per share in securities priced at or above \$1.00 and 0.30% of the trade’s total dollar value in securities priced below \$1.00.

#### Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule effective immediately.<sup>10</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of

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<sup>9</sup> Today, all orders that are routed to post to an away market are routed for display on such market and receive the following rates: (i) rebate of \$0.0015 per share for orders routed to the NYSE; (ii) rebate of \$0.0021 per share for Tapes A and C securities and a rebate of \$0.0022 per share for Tape B securities for orders routed to NYSE Arca; (iii) rebate of \$0.0015 per share for orders routed to NYSE MKT; (iv) rebate of \$0.0015 per share for orders routed to Nasdaq; and (v) a rebate of \$0.0020 per share for orders routed to BZX. See the Exchange’s Fee Schedule available at [http://batstrading.com/support/fee\\_schedule/edga/](http://batstrading.com/support/fee_schedule/edga/). These rates generally represent a pass through of the rate that Bats Trading, Inc. (“Bats Trading”), the Exchange’s affiliated routing broker-dealer, is provided for adding displayed liquidity at NYSE, NYSE Arca, NYSE MKT, Nasdaq, or BZX when it does not qualify for a volume tiered reduced fee or enhanced rebate.

<sup>10</sup> The Exchange initially filed the proposed fee change on May 31, 2016 (SR-BatsEDGX-2016-20). On June 8, 2016, the Exchange withdrew SR-BatsEDGX-2016-20 and submitted this filing.

Section 6 of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>12</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 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. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed fee codes are equitable and non-discriminatory in they would apply uniformly to all Members. The Exchange believes the rates remains competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

In particular, the Exchange believes that the proposed fee codes represent an equitable allocation of reasonable dues, fees, and other charges. The proposed fees are similar to and based on the fees and rebates assessed or provided to Bats Trading when routing to away Trading Centers. For instance, like proposed fee code NA, the NYSE, NYSE Arca, and Nasdaq charge no fee nor provide a rebate for non-displayed orders that add liquidity.<sup>13</sup> In addition, the exchanges that would be covered by proposed fee code NB charge a fee of up to \$0.0030 per

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<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> See the NYSE fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf) (dated May 23, 2016); the NYSE Arca fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) (dated May 23, 2016); and the Nasdaq fee schedule available at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>. The Exchange notes that NYSE MKT and BZX provide a rebate of \$0.0016 and \$0.0017 per share respectively for non-displayed orders that add liquidity. See the NYSE MKT fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/NYSE\\_MKT\\_Equities\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/NYSE_MKT_Equities_Price_List.pdf) (dated May 23, 2016); and the BZX fee schedule available at [http://batstrading.com/support/fee\\_schedule/bzx/](http://batstrading.com/support/fee_schedule/bzx/).

share to add liquidity.<sup>14</sup> In addition, the proposed rate for fee code NB is equal to or greater than similar routing fees charged by other exchanges. For example, the NYSE, NYSE MKT, Nasdaq, and BZX charge a fee of \$0.0030 per share and NYSE Arca charges a fee of \$0.0035 per share regardless of which destination the order is routed.<sup>15</sup>

The Exchange notes that routing through Bats Trading is voluntary. The Exchange is providing a service to allow Members to post orders with a Non-Displayed instruction to these destinations and that those Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provided the rebate from that destination. Therefore, the Exchange believes the rates for proposed fee codes NA and NB are equitable and reasonable because they are related to the rates provided by the away exchange and reasonably account for the routing service provided for by the Exchange. Lastly, the Exchange believes that the proposed amendments are non-discriminatory because it applies uniformly to all Members and that the proposed rates are directly related to rates provided by the destinations to which the orders may be routed.

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

The Exchange does not believe its proposed amendment 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 does not believe that the proposed changes represents a

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<sup>14</sup> See the Bats BYX Exchange Inc. fee schedule available at [http://batstrading.com/support/fee\\_schedule/byx/](http://batstrading.com/support/fee_schedule/byx/); the Bats EDGA Exchange, Inc. fee schedule available at [http://batstrading.com/support/fee\\_schedule/edga/](http://batstrading.com/support/fee_schedule/edga/); and the Nasdaq BX, Inc. fee schedule available at [http://www.nasdaqtrader.com/Trader.aspx?id=bx\\_pricing](http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing). The Exchange notes that it currently does not provide for routing orders to post on the Chicago Stock Exchange, Inc. or the National Stock Exchange, Inc.

<sup>15</sup> See supra note 13. Nasdaq charges a fee of \$0.0035 per share for routed orders that are directed to another market. See the Nasdaq fee schedule at id.

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. For example, routing through Bats Trading is voluntary and Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provide the rebate from that destination.

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 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 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>16</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>17</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>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</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 Number SR- BatsEDGX-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-BatsEDGX-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 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-BatsEDGX-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>18</sup>

Robert W. Errett  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).