

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78771; File No. SR-BatsEDGX-2016-49)

September 6, 2016

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Fees for Use of Bats EDGX 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 22, 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).

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 marketing fee program to institute a monthly cap of \$250,000 on undisbursed funds and reimburse excess funds on a pro-rata basis, as further described below.

The Exchange assesses a marketing fee to all Market Makers for contracts they execute in their assigned classes when the contra-party to the execution is a Customer.<sup>6</sup> The marketing fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. Each Primary Market Maker ("PMM")<sup>7</sup> and Directed Market Maker ("DMM")<sup>8</sup> has a marketing fee pool into

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<sup>6</sup> The amount of the marketing fee depends upon whether the affected option class is a Penny Pilot Security. A marketing fee of \$0.25 per contract is assessed to Market Makers for transactions in Penny Pilot Securities. A Marketing Fee of \$0.70 per contract is assessed to Market Makers for transactions in Non-Penny Pilot Securities. A list of option classes included in the Penny Pilot Program is available on the Exchange's website.

<sup>7</sup> See Exchange Rule 21.8(g).

<sup>8</sup> See Exchange Rule 21.8(f).

which the Exchange will deposit the applicable per-contract marketing fee. For orders directed to DMMs, the applicable marketing fees are allocated to the DMM pool. For non-directed orders, the applicable marketing fees are allocated to the PMM pool. All Market Makers that participated in such transaction will pay the applicable marketing fees to the Exchange, which allocates such funds to the Market Maker that controls the distribution of the marketing fee pool. Each month the Market Maker provides instruction to the Exchange describing how the Exchange is to distribute the marketing fees in the pool to the order flow provider, who submit as agent, Customer orders to the Exchange.

The Exchange proposes to now require that the total balance of the undisbursed marketing fees for a PMM pool and DMM pool cannot exceed \$250,000. When the pool balance exceeds this threshold level, the Exchange will rebate funds proportionately to those who have paid the marketing fee during the preceding month. Today, undisbursed marketing fees are reimbursed to the Market Makers that contributed to the pool based upon their pro-rata portion of the entire amount of marketing fee collected. As proposed, each month, undisbursed marketing fees in excess of \$250,000 will be reimbursed to the Market Makers that contributed to the pool based upon a one month look back and their pro-rata portion of the entire amount of marketing fee collected during that month. The Exchange will closely monitor the levels of the cap to ensure that there are adequate funds available to Market Makers to be competitive. The Exchange believes the proposed cap and reimbursement process would assist Market Makers in better managing their respective marketing fee pools and incentivize them to allocate those funds to order flow providers accordingly on a monthly basis.

## 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>9</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</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 the U.S. options markets are highly competitive, and the marketing fee is intended to provide an incentive for Market Makers to enter into marketing agreements with Members so that they will provide order flow to the Exchange. The marketing fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange.

The Exchange believes that the proposed amendments to its marketing fee program, which is similar to marketing fee programs that have previously been implemented on other options exchanges,<sup>11</sup> will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions. In addition, the proposed cap and reimbursement process would assist Market Makers in better managing their respective marketing fee pools and incentivize them to

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See International Securities Exchange, Inc. ("ISE") fee schedule available at [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE\\_fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf) (implementing a cap of \$100,000); ISE Mercury LLC ("ISE Mercury") fee schedule available at [http://www.ise.com/assets/mercury/documents/OptionsExchange/legal/fee/Mercury\\_Fee\\_Schedule.pdf](http://www.ise.com/assets/mercury/documents/OptionsExchange/legal/fee/Mercury_Fee_Schedule.pdf) (implementing a marketing fee cap of \$100,000); and Chicago Board Options Exchange, Incorporated ("CBOE") fee schedule available at [http://www.cboe.com/framed/pdf/framed.aspx?content=/publish/feeschedule/CBOEFeeSchedule.pdf&section=SEC\\_RESOURCES&title=CBOE%20Fee%20Schedule](http://www.cboe.com/framed/pdf/framed.aspx?content=/publish/feeschedule/CBOEFeeSchedule.pdf&section=SEC_RESOURCES&title=CBOE%20Fee%20Schedule) (implementing a marketing fee cap of \$100,000).

allocate those funds to order flow providers accordingly on a monthly basis. The Exchange notes that most options exchange's that administer a marketing fee program do not cap the monthly contributions,<sup>12</sup> thereby allowing their market makers to roll over monies from month to month without making the disbursements provided for by their respective programs. Therefore, the Exchange believes that providing a cap of \$250,000 is equitable and reasonable as it would allow the Exchange to monitor the impact of the cap on a Market Maker's allocation of marketing fees without inappropriately limiting a Market Maker's ability to carry over funds from month to month.

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

The Exchange believes its 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. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange believes that its proposed marketing fee cap, which is similar to marketing fee caps in place on other options exchanges,<sup>13</sup> will enhance the Exchange's competitive position by resulting in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

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<sup>12</sup> See e.g., Nasdaq PHLX LLC ("PHLX") price list available at <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing>; Miami International Securities Exchange LLC ("MIAX") available at [http://www.miaxoptions.com/sites/default/files/MIAX\\_Options\\_Fee\\_Schedule\\_08012016C.pdf](http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_08012016C.pdf);

<sup>13</sup> See supra note 10.

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>14</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>15</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 proposal 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-BatsEDGX-2016-49 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-BatsEDGX-2016-49. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

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 am and 3:00 pm. 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 No. SR-BatsEDGX-2016-49 and should be submitted on or before [insert 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).