

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79090; File No. SR-BatsEDGX-2016-55)

October 13, 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 September 30, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule in order to: (i) add the definition of OCC Customer Volume or OCV, to the Definitions section of the fee schedule; and (ii) amend Footnote 1 to: (A) modify the criteria for the Cross-Asset Add Volume Tier to reflect the new definition of OCV; and (B) establish a Single MPID Cross-Asset Tier.

OCC Customer Volume Definition

The Exchange proposes to add the definition of "OCC Customer Volume" or "OCV" to the definition section of its fee schedule. OCC Customer Volume or OCV will be defined as the total equity and Exchange Traded Fund ("ETF") options volume that clears in the Customer<sup>6</sup> 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<sup>7</sup> and on any

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<sup>6</sup> As defined in the fee schedule for the Exchange's equity options platform ("EDGX Options") available at [http://www.batsoptions.com/support/fee\\_schedule/edgx/](http://www.batsoptions.com/support/fee_schedule/edgx/).

<sup>7</sup> An "Exchange System Disruption" means "any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours." See the Exchange's fee schedule available at

day with a scheduled early market close, using the definition of Customer as provided under the Exchange's fee schedule for EDGX Options.

Footnote One

The Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure. Currently, the Exchange provides various rebates under Footnote 1 of the fee schedule for a Member dependent on the Member's ADV<sup>8</sup> as a percentage of the TCV<sup>9</sup> for orders that yield fee codes B, V, Y, 3, 4 and ZA. The Exchange currently has none Add Volume Tiers. Under such pricing structure, a Member will receive a rebate of anywhere between \$0.0025 and \$0.0033 per share executed, depending on the volume tier for which such Member qualifies.

Cross-Asset Tier Amendments. Footnote 1 of the fee schedule includes a Cross-Asset Tier under which Members may receive an enhanced rebate of \$0.0028 where they have on EDGX Options an ADV in Firm<sup>10</sup> orders equal to or greater than 0.10% of average TCV and an ADAV<sup>11</sup> equal to or greater than 0.12% of average TCV. The Exchange proposes to replace the term TCV with the new defined term OCV (discussed above). As amended, Members must have on EDGX Options an ADV in Firm orders equal to or greater than 0.15% of average OCV. Because, OCV is a by definition, a smaller amount than TCV, the Exchange proposes to slightly increase the volume percentage required to attain the first prong of the tier from 0.10% to 0.15%.

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[http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/).

<sup>8</sup> As defined in the Exchange's fee schedule available at [http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/).

<sup>9</sup> Id.

<sup>10</sup> As defined in EDGX Option's fee schedule available at [http://www.batsoptions.com/support/fee\\_schedule/edgx/](http://www.batsoptions.com/support/fee_schedule/edgx/).

<sup>11</sup> Exchange's fee schedule available at [http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/).

Doing so will keep tier's criteria relatively unchanged from its current requirements. Lastly, the Exchange will continue to require Members to also have an ADAV equal to or greater than 0.12% of average TCV on the Exchange.

Single MPID Cross-Asset Investor Tier. The Exchange proposes to add new tier to Footnote 1 to be called the Single MPID Cross-Asset Tier. Under the proposed tier, a Member may would receive an enhanced rebate of \$0.0030 per share where that Member's: (i) Market Participant Identifier ("MPID") has on EDGX Options an ADAV in Market Maker<sup>12</sup> orders equal to or greater than 0.12% of average OCV; and (ii) an ADAV equal to or greater than 0.12% of average TCV.

#### Implementation Date

The Exchange proposes to implement the amendments to its fee schedule on October 3, 2016.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>14</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 Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply

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<sup>12</sup> As defined in EDGX Option's fee schedule available at [http://www.batsoptions.com/support/fee\\_schedule/edgx/](http://www.batsoptions.com/support/fee_schedule/edgx/).

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

uniformly to all Members.

The Exchange believes that the proposed modifications to the tiered pricing structure are reasonable, fair and equitable, and non-discriminatory. The proposed fee 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 rebates 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.

The Exchange believes adopting a definition of OCV and utilizing OCV in lieu of TCV for its Cross-Asset Tier is reasonable, fair and equitable, and non-discriminatory because the Exchange also proposed to modify the tier's related criteria in order to maintain substantially identical requirements to qualify for the tier. Competitors of the Exchange also use similar calculations and the proposed qualifications do not represent a significant departure from such pricing structures.<sup>15</sup> The Exchange believes that the proposed qualifications are reasonable, fair and equitable, and non-discriminatory, and will provide additional transparency to Members

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<sup>15</sup> NYSE Amex Options Customer volume tiers require a specific "Customer Electronic ADV as a % of Industry Customer Equity and ETF Options ADV". [https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf). Nasdaq NOM Options Customer volume tiers require a specific percentage of "total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month." <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing>.

regarding the calculations used to determine volume levels for purposes of the proposed tiered pricing model.

The Exchange believes that the proposed Single MIPID Cross-Asset Tier is reasonable, fair and equitable, and non-discriminatory. The increased liquidity from this proposed tier also benefits all investors by deepening the EDGX Options and the Exchange's liquidity pools, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Such pricing programs thereby reward a Member's growth pattern on the Exchange and such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. To the extent a Member participates on EDGX Options and not EDGX Equities, the Exchange believes that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of EDGX Options. As noted above, such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Options or not. The proposed tier is also fair and equitable in that membership in EDGX Options is available to all market participants which would provide them with access to the benefits on EDGX Equities provided by the proposed changes, as described above, even where a member of EDGX Equities is not necessarily eligible for the proposed increased rebates on the Exchange. Further, the proposed changes will result in Members receiving either the same or an increased rebate than they would currently receive.

The Exchange further believes that the proposed addition of the Single MPID Cross Asset Tier represents an equitable allocation of reasonable dues, fees, and other charges among

Members and other persons using its facilities because it rewards Members with order flow characteristics that contribute meaningfully to price discovery on the Exchange. In other words, Members that post a substantial amount of liquidity and primarily post liquidity are valuable Members to the EDGX Options and EDGX Equities Exchanges and the marketplace in terms of liquidity provision. By applying the tier on a single MPID rather than across a Member's entire trading activity, the Exchange is also allowing more Members to potentially receive the enhanced rebates for their trading activity related to liquidity provision. The Single MPID Cross Asset Tier also encourages Members to primarily add liquidity in order to satisfy the ADAV as a percentage of OCV. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of higher rebates. The increased liquidity also benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the ones proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide 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 introduction of higher volumes of orders into the price and volume discovery processes.

In addition, the rebate is also reasonable in that other exchanges likewise employ similar pricing mechanisms based on a Member's MPID.<sup>16</sup> Finally, the Exchange also believes that the

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<sup>16</sup> See Bats BZX Exchange, Inc. fee schedule [available at](#)

proposed Single MPID Investor Tier is non-discriminatory in that it would apply equally to all Members.

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 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. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members. The Exchange does not believe that the proposed new tiers and standard removal rates would burden competition, but instead, enhances competition, as they are intended to increase the competitiveness of and draw additional volume to the Exchange. As stated above, 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 structures to be unreasonable or excessive. The proposed changes are generally intended to draw additional liquidity to the Exchange. The Exchange does not believe the proposed tiers and standard rates would burden intramarket competition as they would apply to all Members uniformly.

The Exchange does not believe that the proposed new Single MPID Cross-Asset Add Tier would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange and EDGX Options. The Exchange does not believe that its proposal would burden intramarket competition because the

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[http://batstrading.com/support/fee\\_schedule/bzx/](http://batstrading.com/support/fee_schedule/bzx/) (offering a Single MPID Investor Tier with volume requirements based on MPID).

proposed rebate would apply uniformly to all Members that achieve the objective criteria of the Single MPID Investor Tier.

Lastly, the Exchange believes that its proposal to amend the qualification criteria for the Cross-Asset Tier to incorporate OCV would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange also proposed to modify the tier's related criteria in order to maintain substantially identical requirements to qualify for the tier.

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>17</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>18</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:

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f).

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-2016-55 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-2016-55. 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-2016-55, 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).