

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79306; File No. SR-BatsEDGX-2016-63)

November 14, 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 November 1, 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 EDGA 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

Fee Code Z

The Exchange proposes to increase the fee for orders yielding fee code Z, which is yielded on orders routed to a non-exchange destination using ROUZ<sup>6</sup> routing strategy, from \$0.00100 to \$0.00120 per share for securities priced at or above \$1.00. The Exchange does not propose to amend the rate for orders yielding fee code Z in securities priced below \$1.00.

Fee Code O

The Exchange also proposes to amend footnote 5 of its Fee Schedule to increase the fee cap for orders yielding fee code O from \$20,000 to \$35,000 per month per Member. Fee code O is appended to orders that are touted to participate in the listing market's opening or re-opening cross and are charged a fee of \$0.00100 per share for orders in securities priced at or above \$1.00 and 0.30% of the transaction dollar value for securities priced below \$1.00. When the Exchange routes to a listing exchange's opening cross, such as the Nasdaq Stock Market LLC ("Nasdaq"),

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<sup>6</sup> See Exchange Rule 11.11(g)(3).

the Exchange passes through the tier saving that Bats Trading, Inc. (“Bats Trading”), the Exchange’s routing broker-dealer, achieves on an away exchange to its Members. This tier savings takes the form of a cap of Member’s fees at \$20,000 per month for using fee code O. The proposed increase in the fee cap under footnote 5 is in response to the September 2016 fee cap change by Nasdaq for orders that participate in their opening cross processes.<sup>7</sup> Nasdaq’s September 2016 fee cap increase requires that members add, at a minimum, one million shares of liquidity to Nasdaq, on average per day, during the month to be eligible for its existing fee cap of \$35,000 for orders that participate in the opening cross. When Bats Trading routes to Nasdaq’s opening cross, it will now be subject to the increase fee cap and new tier requirement. The proposed increase to the fee cap under footnote 5 would enable the Exchange to equitably allocate its costs among all Members utilizing fee code O. Therefore, the Exchange proposes to amend footnote 5 to increase the fee cap for orders yielding fee code O from \$20,000 to \$35,000 per month per Member in response to Nasdaq’s September 2016 increased fee cap and related requirements.

#### Implementation Date

The Exchange proposes to implement this amendment to its Fee Schedule November 1, 2016.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> in particular, as

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<sup>7</sup> See Securities Exchange Act Release No. 78977 (September 29, 2016), 81 FR 691140 [sic] (October 5, 2016) (SR-Nasdaq-2016-132) (increasing the fee cap for orders executed in its opening cross from \$30,000 to \$35,000).

<sup>8</sup> 15 U.S.C. 78f.

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.

#### Fee Code Z

The Exchange believes that its proposal to increase the fee for orders routed to a non-exchange destination that yield fee code Z represents an equitable allocation of reasonable dues, fees, and other charges among Members and other person using its facilities in that they are designed in part to cover the costs of routing. While Members that route to a non-exchange destination using ROUZ routing strategy will be paying higher fees due to the proposal, the increased revenue received by the Exchange will be used to fund the Exchange generally, including the cost of maintaining and improving the technology used to handle and route orders from the Exchange as well as programs that the Exchange believes help to attract additional liquidity and thus improve the depth of liquidity available on the Exchange. Accordingly, although the cost of routing is increasing, the Exchange believes that the increase is a modest increase and that higher routing fees will benefit Members in other ways. Furthermore, the Exchange notes that routing through the Exchange is voluntary. Lastly the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

#### Fee Code O

The Exchange believes that its proposal to amend footnote 5 to increase the fee cap for orders yielding fee code O from \$20,000 to \$35,000 per month per Member represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. The proposed increase in the fee cap under footnote 5 is in response

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<sup>9</sup> 15 U.S.C. 78f(b)(4).

to September 2016 fee cap increase by Nasdaq for orders that participate in their opening cross process. Prior to Nasdaq's September 2016 fee cap increase, Nasdaq capped Bats Trading monthly fees for participating in its opening cross at \$30,000. Nasdaq capped Bats Trading monthly fees for participating in its opening cross at \$30,000. Nasdaq has now increased that cap to \$35,000.<sup>10</sup> The proposed increase to the fee cap under footnote 5 would enable the Exchange to equitably allocate its costs among all Member who utilize fee code O. Therefore, the Exchange believes that the proposed change to footnote 5 is equitable and reasonable because it accounts for the increased Nasdaq fee cap, which enables the Exchange to apply to its Member similar fee caps. The Exchange notes that routing through Bats Trading is voluntary and believes that the proposed change is non-discriminatory because it applies uniformly to all Members.

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

This proposed rule change does 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 this change represents a significant departure from previous pricing offered by the Exchange or from 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 believes that its proposal would not burden intramarket competition because the proposed rates would apply uniformly to all Members.

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<sup>10</sup> See supra note 7.

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>11</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>12</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:

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-2016-63 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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-BatsEDGX-2016-63. 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-2016-63, 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>13</sup>

Brent J. Fields  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).