

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80658; File No. SR-BatsEDGX-2017-21)

May 11, 2017

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 8, 2017, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 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 the 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.bats.com](http://www.bats.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 fee schedule for its equity options platform ("EDGX Options") to: (i) modify fees for Qualified Contingent Cross Orders ("QCC"),<sup>6</sup> including the adoption of a new naming convention for certain rebates, "QCC Initiator Rebates"; (ii) update the descriptions for fee codes PM and NM; (iii) add new fee codes PT and NT; and (iv) eliminate Tiers 4 and 6 under footnote 1.

QCC Order Pricing

The Exchange proposes to amend QCC fees and rebates to reflect the value of the execution opportunities provided by the QCC functionality. Thus, the Exchange proposes to modify the fees and rebates corresponding to the fee codes that were originally adopted in connection with QCC, as described below.

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<sup>6</sup> See Securities Exchange Act Release No. 79942 (February 1, 2017), 82 FR 9804 (February 8, 2017) (SR-BatsEDGX-2017-11) ("QCC Filing").

Fee Code QA. Currently, fee code QA is appended to Customer<sup>7</sup> QCC Agency Orders<sup>8</sup>, and provides a standard rebate of \$0.05 per contract. The Exchange proposes to alter the pricing for QCC Agency Orders yielding fee code QA to instead provide such executions free of charge. However, as proposed, the Exchange would continue to provide a rebate of \$0.05 per contract to QCC Agency orders in which at least one side of the transaction is a Non-Customer<sup>9</sup> order. This proposed rebate of \$0.05 per contract for such executions will be described in footnote 7 more specifically and there will be no other charge or rebate for executing orders appended with QA. Thus, the Exchange proposes to append footnote 7 to fee code QA in addition to the existing footnote appended to fee code QA, footnote 5. Current footnote 5 and proposed footnote 7 are described in additional detail below.

Fee Code QC. Currently, fee code QC is appended to Customer QCC Contra Orders, and provides a standard rebate of \$0.05 per contract. The Exchange proposes to alter the pricing for QCC Agency Orders yielding fee code QC to instead provide such executions free of charge. The Exchange proposes to remove footnote 5 from QC, as there is no longer the potential to earn a rebate in connection with routing a Customer QCC Contra Order to the Exchange and thus the footnote is inapplicable. Footnote 5 is described in additional detail below.

Fee Code QM. Currently, fee code QM is appended to Non-Customer QCC Agency Orders, and assessed a fee of \$0.19 per contract. The Exchange proposes to lower the fee charged for Non-Customer QCC Agency Orders to \$0.08 per contract. In addition, as noted

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<sup>7</sup> “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. See the Exchange’s fee schedule available at [http://www.bats.com/us/options/membership/fee\\_schedule/edgx/](http://www.bats.com/us/options/membership/fee_schedule/edgx/).

<sup>8</sup> “QCC Agency” is a Qualified Contingent Cross Order represented as agent by a Member on behalf of another party and submitted for execution pursuant to Rule 21.1. Id.

<sup>9</sup> “Non-Customer” applies to any transaction that is not a Customer order. Id.

above, the Exchange proposes to provide a rebate of \$0.05 per contract to QCC Agency orders in which at least one side of the transaction is a Non-Customer order. This proposed rebate of \$0.05 per contract for such executions will be described in footnote 7. Accordingly, the Exchange proposes to append footnotes 5 and 7 to fee code QM, as there will now be the potential to receive a rebate in connection with QCC Agency Orders.

Fee Code QN. Currently, fee code QN is appended to Non-Customer QCC Contra Orders, and assessed a fee of \$0.19 per contract. The Exchange proposes to lower the fee charged for Non-Customer QCC Contra Orders to \$0.08 per contract.

As noted above, The Exchange proposes to modify the rebates provided to QCC orders, to only apply to QCC Agency Orders in which one side of the transaction includes a Non-Customer order. The Exchange proposes that the rebate applicable to QCC orders be defined as the “QCC Initiator Rebate” and its scope be refined to only apply to QCC Agency orders in which at least one side of the transaction is a Non-Customer order.

The Exchange proposes to adopt new footnote 7 to describe the rebate paid by the Exchange to a Member that submits a QCC Agency Order to the Exchange when at least one side of the transaction is of Non-Customer capacity and to define this rebate as the QCC Initiator Rebate. As proposed, and consistent with other pricing on the Exchange, the Exchange would provide the QCC Initiator Rebate to all Members submitting QCC Agency Orders to the Exchange, including a Member who routed an order to the Exchange with a Designated Give Up, as discussed below.

In connection with the proposed change and the adoption of footnote 7, footnote 5 would be appended to fee code QM<sup>10</sup> and removed from fee code QC. Currently, footnote 5 of the fee schedule specifies that when order is submitted with a Designated Give Up, as defined in Rule 21.12(b)(1), the applicable rebates for such orders when executed on the Exchange (yielding fee code BC,<sup>11</sup> NC,<sup>12</sup> PC,<sup>13</sup> QA and QC) are provided to the Member who routed the order to the Exchange. Pursuant to Rule 21.12, which specifies the process to submit an order with a Designated Give Up, a Member acting as an options routing firm on behalf of one or more other Exchange Members (a “Routing Firm”) is able to route orders to the Exchange and to immediately give up the party (a party other than the Routing Firm itself or the Routing Firm’s own clearing firm) who will accept and clear any resulting transaction. Because the Routing Firm is responsible for the decision to route the order to the Exchange, the Exchange currently provides such Member with the rebate when orders that yield fee code BC, NC, PC, QA and QC are executed. As amended, the Exchange would provide rebates to a Routing Firm when orders that yield fee code BC, NC, PC, QA and QM are executed.

#### Fee Codes PM and NM

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<sup>10</sup> Fee code QM is appended to QCC Non-Customer orders represented as agent by a Member on behalf of another party for execution pursuant to Rule 21.1. Id.

<sup>11</sup> Fee code BC is appended Customer orders represented as agent by a Member on behalf of another party and submitted to BAM for potential price improvement pursuant to Rule 21.19, and provided a standard rebate of \$0.14 per order. Id.

<sup>12</sup> Fee code NC is appended to Customer orders which add liquidity in Non-Penny Pilot securities and is provided a standard rebate of \$0.05 per order. Id.

<sup>13</sup> Fee code PC is appended to Customer orders which add liquidity in Penny Pilot securities and is provided a standard rebate of \$0.05 per order. Id.

Currently fee codes PM and NM apply to orders in Market Maker<sup>14</sup> Penny Pilot<sup>15</sup> and Non-Penny Pilot contracts, respectively. To further specify which orders add and remove liquidity, the Exchange proposes to modify the definitions for PM and NM. As proposed, fee code PM would be appended to Market Maker Penny Pilot orders which add liquidity. Fee code NM would be appended to Market Maker Non-Penny Pilot orders which add liquidity. The Exchange does not propose to alter the standard fee of \$0.19 per contract assessed on orders appended with fee codes PM and NM.

#### Fee Codes PT and NT

Exchange proposes to amend its fee schedule to add fee codes PT and NT, which would apply to orders which remove liquidity in Market Maker Penny Pilot and Non-Penny Pilot orders, respectively. Similar to the current fee codes PM and NM, orders appended with fee codes PT and NT would be assessed a fee of \$0.19 per contract.

#### Eliminate Customer Volume Tiers 4 and 6

Footnote 1 of the fee schedule sets forth six tiers, each providing enhanced rebates ranging from \$0.10 to \$0.25 per contract to a Member's order that yields fee code PC or NC upon satisfying monthly volume criteria. The Exchange proposes to eliminate Tiers 4 and 6 as they did not result in incentivizing additional order flow as designed. In connection with the change the Exchange proposes to update the standard rates table to reflect the removal of the \$0.25 rebate applicable to Tiers 4 and 6.

#### Implementation Date

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<sup>14</sup> "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.

<sup>15</sup> "Penny Pilot Securities" are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01. Id.

The Exchange proposes to implement this amendment to its fee schedule on May 1, 2017.<sup>16</sup>

## 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>17</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>18</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.

### QCC Pricing

The Exchange believes that its proposed fees and rebates related to QCC Orders are reasonable and fair and equitable as the fees will allow the Exchange to continue to offer QCC Order functionality, which is functionality offered on other options exchanges, with pricing that is comparable to that offered by other options exchanges. The Exchange further believes that this pricing structure is non-discriminatory, as it applies equally to all Members. In addition, the Exchange believes this proposal is reasonable because, while orders for other market participants (Non-Customers) will be assessed a fee, the Exchange is reducing this fee; further, orders for Customers will receive free executions and Members submitting QCC Agency Orders will

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<sup>16</sup> The Exchange initially submitted the proposed fee change on May 1, 2017. (SR-BatsEDGX-2017-18). On May 8, 2017, the Exchange withdrew SR-BatsEDGX-2017-18 and submitted this filing.

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(4).

receive a rebate where one side of the transaction is a Non-Customer order. The Exchange believes the proposed QCC Initiator Rebate is equitable and not unfairly discriminatory as the Exchange and other options exchanges have generally established pricing structures that are intended to encourage additional QCC order flow.

#### Fee Codes Addition and Modification

The Exchange believes that its proposals to add fee codes PT and NT related specifically to orders which remove liquidity and modify the definition of PM and NM related specifically to orders which add liquidity are fair and equitable and reasonable because the proposed fees for orders appended with fee codes PT, NT, PM and NM are identical and consistent with pricing previously offered by the Exchange as well as competitors of the Exchange and do not represent a significant departure from the Exchange's general pricing structure. Instead, the changes and additions will simply allow the Exchange to further differentiate between different types of executions for purposes of transparency to Members as well as potential future pricing changes. Also, the proposed changes to fee codes are not unfairly discriminatory because they will apply equally to all Members.

#### Eliminating Customer Volume Tiers 4 and 6

Lastly, the Exchange believes that eliminating the Customer Volume Tiers 4 and 6 under footnote 1 is reasonable, fair, and equitable because these tiers were not providing the desired result of incentivizing Members to increase their participation in Customer orders on the Exchange. As such, the Exchange also believes that the proposed elimination of these tiers would be non-discriminatory in that they currently apply equally to all Members and, upon elimination, would no longer be available to any Members. Further, their elimination will allow

the Exchange to explore other pricing mechanisms in which it may enhance market quality for all Members.

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

The Exchange does not believe that the proposed change to fees related to QCC Orders will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed functionality is open to all market participants. The proposals to provide a rebate for certain QCC Agency Orders through the QCC Initiator Rebate and to reduce fees for QCC Contra Orders are competitive proposals intended to incentivize the entry of additional orders into QCC. Further, the pricing is designed to be competitive with pricing on other options exchanges and QCC functionality is a competitive offering by the Exchange. Further, the Exchange does not believe that the changes to eliminate pricing incentives that have been ineffective, to modify fee code descriptions or add fee codes will impose any burden on competition. For these reasons, the Exchange does not believe that the proposed fee schedule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition.

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>19</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>20</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-2017-21 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-2017-21. 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

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2017-21, 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>21</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).