

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78522; File No. SR-BatsEDGX-2016-40)

August 9, 2016

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of the Exchange's 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 July 29, 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).

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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 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 the criteria necessary to achieve Customer Volume Tier 5; (ii) modify criteria necessary to achieve Market Maker Volume Tier 7 and decrease the corresponding rate; and (iii) adopt a new tier entitled the "Firm Penny Pilot Cross-Asset Tier".

The Exchange determines the reduced fee or enhanced rebate using a tiered pricing structure offering two tiers under footnotes 1 and 2 of the fee schedule, Customer Volume Tiers and Market Maker Volume Tiers, respectively. Under the tiers, Members that achieve certain volume criteria may qualify for reduced fees or enhanced rebates for Customer<sup>6</sup> and Market

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

Maker<sup>7</sup> orders. The Exchange proposes to modify the criteria necessary to achieve Customer Volume Tier 5 under footnote 1, and modify the corresponding rate and criteria necessary to achieve Market Maker Volume Tier 7 under footnote 2. The Exchange also proposes to adopt a new tier entitled the “Firm Penny Pilot Cross-Asset Tier” under a new footnote 4.

Customer Volume Tier 5. Fee codes PC and NC are currently appended to all Customer orders in Penny Pilot Securities<sup>8</sup> and Non-Penny Pilot Securities,<sup>9</sup> respectively, and result in a standard rebate of \$0.05 per contract. The Customer Volume Tiers in footnote 1 consist of five separate tiers, each providing an enhanced rebate to a Member’s Customer order that yields fee codes PC or NC upon satisfying monthly volume criteria required by the respective tier. For instance, pursuant to Customer Volume Tier 1, the lowest volume tier, a Member will receive a rebate of \$0.10 per contract where the Member has an ADV<sup>10</sup> in Customer orders equal to or greater than 0.15% of average TCV.<sup>11</sup>

Pursuant to Customer Volume Tier 5, a Member currently will receive a rebate of \$0.21 per contract where: (i) the Member has an ADV in Customer orders equal to or greater than 0.20% of average TCV; and (ii) the Member has an ADV in Market Maker orders equal to or greater than 0.10% of average TCV. To encourage the entry of additional orders, the Exchange proposes to modify the criteria necessary to achieve Customer Volume Tier 5 to require that: (i) the Member has an ADV in Customer orders equal to or greater than 0.05% of average TCV; and

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<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> As defined in the Exchange’s fee schedule available at [http://www.batsoptions.com/support/fee\\_schedule/edgx/](http://www.batsoptions.com/support/fee_schedule/edgx/).

(ii) the Member has an ADV in Customer or Market Maker orders equal to or greater than 0.25% of average TCV. The Exchange believes that decreasing the first prong's ADV requirement and expanding the second prong to include Customer orders, despite increasing the corresponding ADV requirement, will make Customer Volume Tier 5 more attainable for additional Members who seek to receive the increased rebate for their orders that yield fee codes NC or PC.

Market Maker Volume Tier 7. Fee codes PM and NM are currently appended to all Market Maker orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively, and result in a standard fee of \$0.19 per contract. The Market Maker Volume Tiers in footnote 2 consist of seven separate tiers, each providing a reduced fee or rebate to a Member's Market Maker order that yields fee codes PM or NM upon satisfying the monthly volume criteria required by the respective tier. For instance, pursuant to Market Maker Volume Tier 1, the lowest volume tier, a Member will pay a reduced fee of \$0.16 per contract where the Member has an ADV in Market Maker orders equal to or greater than 0.05% of average TCV.

Pursuant to Market Maker Volume Tier 7, a Member will be charged a reduced fee of \$0.10 per contract where the Member has an ADV in: (i) Customer orders equal to or greater than 0.20% of average TCV; (ii) Market Maker orders equal to or greater than 0.10% of average TCV. To encourage the entry of additional orders to the Exchange, the Exchange proposes to modify the criteria necessary to achieve Market Maker Volume Tier 7 to require that: (i) the Member has an ADV in Customer orders equal to or greater than 0.05% of average TCV; and (2) the Member has an ADV in Customer or Market Maker orders equal to or greater than 0.25% of average TCV. The Exchange believes that decreasing the first prong's ADV requirement and expanding the second prong to include Customer orders, despite increasing the corresponding ADV requirement, will make Customer Volume Tier 5 [sic] more attainable for additional

Members who seek to receive the increased rebate for their orders that yield fee codes NM or PM. Additionally, the Exchange proposes to reduce the fee for the Market Maker Volume Tier 7 from \$0.10 per contract to \$0.03 per contract. In conjunction with the proposed tier, the Exchange also proposes to update the Standard Rate table.

Firm Penny Pilot Cross-Asset Tier. The Exchange proposes to amend its fee schedule to adopt a new tier under footnote 4 called the Firm Penny Pilot Cross-Asset Tier. The proposed tier would require participation on the Exchange's equities platform ("EDGX Equities") and would provide Members a reduced fee of \$0.32 per contract for orders that yield fee code PF<sup>12</sup> where the Member: (i) has an ADV in Firm<sup>13</sup> orders equal to or greater than 0.10% of average TCV; and (ii) has on EDGX Equities an ADAV<sup>14</sup> equal to or greater than 0.12% of average TCV. In conjunction with the proposed tier, the Exchange also proposes to append footnote 4 to fee code PF in the Fee Codes and Associate Fees table and to update the Standard Rate table.

#### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on August 1, 2016.

#### 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

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<sup>12</sup> Fee code PF is appended to Firm orders in Penny Pilot Securities.

<sup>13</sup> As defined in the Exchange's fee schedule available at [http://www.batsoptions.com/support/fee\\_schedule/edgx/](http://www.batsoptions.com/support/fee_schedule/edgx/).

<sup>14</sup> As defined in the EDGX Equities' fee schedule available at [http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/).

exchange, and, in particular, with the requirements of Section 6 of the Act.<sup>15</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>16</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 believes its proposed fees and rebates pursuant to the tiered pricing structure are reasonable, fair and equitable, and non-discriminatory. The Exchange operates in a highly competitive market in which market participants may readily send order flow to many competing venues if they deem fees at the Exchange to be excessive. As a new options exchange, the proposed fee structure remains intended to attract order flow to the Exchange by offering market participants a competitive yet simple pricing structure. At the same time, the Exchange believes it is reasonable to incrementally adopt incentives intended to help to contribute to the growth of the Exchange.

Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by options exchanges 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 the value of an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. The proposed modifications to the Customer Volume Tier 5 and Market Maker Volume Tier 7 and the addition of footnote 4, Firm Penny Pilot Cross-Asset Tier, are each intended to incentivize Members to send additional

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

Customer and Market Maker orders to the Exchange in an effort to qualify for the enhanced rebate or lower fee made available by the tiers.

The Exchange believes that the proposal to add a Firm Penny Pilot Cross-Asset Tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees because it will provide Members with an additional incentive to reach certain thresholds on both EDGX Options and EDGX Equities. The increased liquidity from this proposal also benefits all investors by deepening the EDGX Options and EDGX Equities 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 the EDGX Options but not on EDGX Equities, the Exchange does believe 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 Equities. 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 Equities or not. The proposed pricing program is also fair and equitable in that membership in EDGX Equities 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.

The Exchange believes that the proposed tiers are reasonable, fair and equitable, and non-discriminatory, for the reasons set forth above with respect to volume-based pricing generally and because such changes will incentivize participants to further contribute to market quality. The proposed tiers will provide an additional way for market participants to qualify for enhanced rebates or reduced fees. The Exchange also believes that the proposed tiered pricing structure is consistent with pricing previously offered by the Exchange as well as other options exchanges and does not represent a significant departure from such pricing structures.<sup>17</sup>

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the 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. To the contrary, the Exchange has designed the proposed amendments to its fee schedule to enhance its ability to compete with other exchanges. Rather, the proposal as a whole is a competitive proposal that is seeking to further the growth of the Exchange. The Exchange has structured certain fees and rebates proposed herein to attract certain additional volume in both Customer and certain Non-Customer<sup>18</sup> orders, however, the Exchange believes that its pricing for all capacities is competitive with that offered by other options exchanges. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that the alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their

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<sup>17</sup> See, e.g., Bats BZX Exchange, Inc. ("BZX") Options Fee Schedule, Footnote 1, Customer Add Volume Tier 5, which provides an enhanced rebate to Customer orders on BZX Options based on both Customer volume and Market Maker volume. The BZX Options Fee Schedule is available at: [http://www.batsoptions.com/support/fee\\_schedule/bzx/](http://www.batsoptions.com/support/fee_schedule/bzx/).

<sup>18</sup> As defined in the Exchange's fee schedule available at [http://www.batsoptions.com/support/fee\\_schedule/edgx/](http://www.batsoptions.com/support/fee_schedule/edgx/).

competitive standing in the financial markets. The Exchange believes that the price changes contribute to, rather than burden competition, as such changes are broadly intended to incentivize participants to increase their participation on the Exchange, which will increase the liquidity and market quality on the Exchange and further enhance the Exchange's ability to compete with other exchanges.

(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:

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

<sup>20</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-2016-40 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-2016-40. 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 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 Number SR-BatsEDGX-2016-40 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>

Robert W. Errett  
Deputy Secretary

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