

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79255; File No. SR-BatsBZX-2016-69]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of the Exchange's Equity Options Platform

November 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 27, 2016, Bats BZX Exchange, Inc. ("BZX" or the "Exchange") 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 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>3</sup> and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</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).

#### 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 applicable to the Exchange's equity options platform ("BZX Options") to add a new Step-Up Tier under footnote 3, Non-Customer Penny Pilot Take Volume Tiers.

The Exchange appends fee code PP to Non-Customer<sup>4</sup> orders in Penny Pilot Securities<sup>5</sup> that removes liquidity. Orders that yield fee code PP are charged a fee of \$0.50 per contract. The Exchange offers three tiers under footnote 3, Non-Customer Penny Pilot Take Volume Tiers, which offer reduced fees for Non-Customer orders that yield fee code PP upon achieving each tier's required criteria. Under Tier 1, orders that yield fee code PP will be eligible for a reduced fee of \$0.44 [sic] per contract where the Member has: (i) an ADAV<sup>6</sup> in Customer<sup>7</sup> orders equal to or greater than 0.60% of average TCV;<sup>8</sup> (ii) an ADAV in Market Maker<sup>9</sup> orders equal to or greater than 0.25% of average TCV; and (iii) on the Exchange's equities platform, BZX Equities, an ADAV equal to or greater than 0.30% of average TCV. Under Tier 2, orders that yield fee code PP will be eligible for a reduced fee of \$0.47 per contract where the Member has an ADAV in Customer orders equal to or greater than 1.00% of average TCV. Lastly, under Tier 3, orders that yield fee code PP will be eligible for a reduced fee of \$0.44 per contract where the Member has an ADAV in Customer orders equal to or greater than 1.30% of average TCV.

The Exchange now proposes to reduce the above fees by \$0.01 for Members that achieve certain additional volume requirements. Specifically, the Exchange proposes to add a Step-Up tier under footnote 3 such that the fee charged to a Member under fee code PP and the Non-Customer Penny Pilot Take Volume Tiers described above would be reduced by \$0.01 per contract where the Member has an Options Step-Up Add TCV<sup>10</sup> in Customer orders from September 2016 baseline equal to or greater than 0.30%. The criteria for the

<sup>4</sup> As defined in the Exchange's fee schedule available at [http://www.bats.com/us/options/membership/fee\\_schedule/bzx/](http://www.bats.com/us/options/membership/fee_schedule/bzx/)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> As defined in the Exchange's fee schedule available at [http://www.bats.com/us/options/membership/fee\\_schedule/bzx/](http://www.bats.com/us/options/membership/fee_schedule/bzx/).

<sup>10</sup> *Id.*

proposed Step-Up Tier under footnote 3 would be in addition the criteria required by the three Non-Customer Take Volume tiers under footnote 3.

##### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule as of 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>11</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>12</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. Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by equities and 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 to 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 addition of the Non-Customer Penny Pilot Take Volume Step-Up Tier is intended to incentivize Members to send additional orders to the Exchange in an effort to qualify for a further reduced fee for orders that yield fee code PP and the Non-Customer Penny Pilot Take Volume Tiers under footnote 3. The Exchange believes the rates remain competitive with those charged by other venues<sup>13</sup> and, therefore, are reasonable and equitably allocated to Members. 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 Step-Up Tier is equitable and non-discriminatory in that it would apply uniformly to all Members.

The Exchange also believes requiring the Member to have an Options Step-Up Add TCV in Customer orders from September 2016 baseline equal to or

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> See NYSE Arca, Inc.'s fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf) (dated October 1, 2016) (offering additional credits to under incentive programs for customer, professional customer, and market maker orders as well as a separate take fee discount qualification tier).

greater than 0.30% is also equitable and reasonable. Such pricing programs 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. The Exchange believes that providing additional financial incentives to Members that demonstrate an increase over their September 2016 Options Step-Up Add TCW through the proposed tier offers an additional, flexible way to achieve financial incentives from the Exchange and encourage Members to add liquidity to the Exchange. The Exchange believes that this incentive is reasonable, fair and equitable because the liquidity from the proposed tier 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. These pricing programs are also fair and equitable in that they are available to all Members and will result in Members receiving either the same or an increased rebate than they would currently receive.

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

The Exchange believes the proposed amendment 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 amendment to its fee schedule to enhance its ability to compete with other exchanges. Also, the Exchange believes that the addition of the proposed tier contributes to rather than burdens competition, as such tier is intended to incentivize Members to increase their participation on the Exchange, which will increase the liquidity and market quality on the Exchange, which will then further enhance the Exchange's ability to compete with other exchanges.

The Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. 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 change to the Exchange's tiered pricing structure burdens competition, but instead, enhances competition as it is intended

to increase the competitiveness of the Exchange.

#### *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>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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsBZX-2016-69 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BatsBZX-2016-69. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 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-BatsBZX-2016-69, and should be submitted on or before December 5, 2016.

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

**Brent J. Fields,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting**

Notice is hereby given that, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, the Securities and Exchange Commission will hold an Open Meeting on Tuesday, November 15, 2016, at 3:00 p.m., in the Auditorium, Room L-002.

The subject matter of the Open Meeting will be:

- The Commission will consider whether to approve a proposed national market system ("NMS") plan to create, implement, and maintain a consolidated audit trail, submitted pursuant to Rule 613 of Regulation NMS.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact Brent J. Fields in the Office of the Secretary at (202) 551-5400.

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

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

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