

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80034; File No. SR–BatsEDGX–2017–09]

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

February 14, 2017.

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 February 1, 2017, 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 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.

##### 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 amend its fee schedule to: (i) Increase the standard rate to remove liquidity to \$0.0030 per share; (ii) increase the rate for orders that yield fee codes EA or ER; (iii) add a definition for the term “Step-Up Add TCV”; and (iii) add a new Step-Up Tier under footnote 1.

###### Standard Removal Rate

Currently, fee codes 6,<sup>6</sup> BB,<sup>7</sup> N,<sup>8</sup> PR,<sup>9</sup> W<sup>10</sup> and ZR<sup>11</sup> of the Exchange's fee schedule set for the standard rate of \$0.0029 charged per share to orders that remove liquidity from the Exchange in securities priced equal to or greater than \$1.00. The Exchange now proposes to increase the standard rate for orders in securities priced equal to or greater than \$1.00 that remove liquidity from the Exchange to \$0.0030 per share.<sup>12</sup> Therefore, the Exchange proposes to increase the rate under fee codes 6, BB, N, PR, W and ZR from \$0.0029 to \$0.0030 per share. The Exchange also proposes to update the Standard Rates table accordingly to reflect new standard rate.<sup>13</sup>

<sup>6</sup> As described in the Exchange's fee schedule, orders that remove liquidity from the Exchange during the pre and post market yield fee code 6 and are charged the standard removal rate of \$0.0029 per share.

<sup>7</sup> As described in the Exchange's fee schedule, orders that remove liquidity from the Exchange in Tape B securities yield fee code BB and are charged the standard removal rate of \$0.0029 per share.

<sup>8</sup> As described in the Exchange's fee schedule, orders that remove liquidity from the Exchange in Tape C securities yield fee code N and are charged the standard removal rate of \$0.0029 per share.

<sup>9</sup> As described in the Exchange's fee schedule, orders that remove liquidity from the Exchange utilizing the ROUQ routing strategy yield fee code PR and are charged the standard removal rate of \$0.0029 per share. The ROUQ routing strategy is described in Exchange Rule 11.11(b)(3)(D).

<sup>10</sup> As described in the Exchange's fee schedule, orders that remove liquidity from the Exchange in Tape A securities yield fee code W and are charged the standard removal rate of \$0.0029 per share.

<sup>11</sup> As described in the Exchange's fee schedule, Retail Orders that remove liquidity from the Exchange yield fee code ZR and are charged the standard removal rate of \$0.0029 per share. Retail Orders are defined in Exchange Rule 11.21(a)(2).

<sup>12</sup> The Exchange does not propose to amend the standard removal rate for orders in securities priced below \$1.00.

<sup>13</sup> The Exchange also proposes to add fee code PR to the Standard Fee Code row of the Standard Rates

Fee Codes EA or ER

An Internalized Trade is a trade where the two orders inadvertently match against each other and share the same Market Participant Identifier (“MPID”). Fee code EA is appended to side of an Internalized Trade that adds liquidity, while fee code ER is appended to the side of an Internalized Trade that removes liquidity. Orders that yield fee codes EA or ER are charged a fee of \$0.00045 per share in securities priced at or above \$1.00 and 0.15% of the dollar value of the trade in securities priced below \$1.00. The Exchange now proposes to increase the fee for orders that yield fee codes EA or ER in securities priced at or above \$1.00 to \$0.00050 per share.<sup>14</sup>

###### Step-Up Add Volume Tier

The Exchange proposes to add a definition for the term “Step-Up Add TCV” and add a new Step-Up Tier under footnote 1.

First, the Exchange proposes to define the term “Step-Up Add TCV” as “ADAV<sup>15</sup> as a percentage of TCV<sup>16</sup> in the relevant baseline month subtracted from current ADAV as a percentage of TCV.”

Second, the Exchange proposes to add a new tier under footnote 1 of the fee schedule to be known as “Step-Up Tier 1” [sic]. By way of background, the Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure. 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 under footnote 1 of the fee schedule. Under the proposed Step-Up Tier, a Member would receive a rebate of \$0.0032 per share for orders that add liquidity where that Member adds an ADV<sup>17</sup> equal to or greater than 0.40% of the TCV and has a Step-Up Add TCV from January 2017 equal to or greater than 0.10%.

###### Implementation Date

The Exchange proposes to implement the above changes to its fee schedule on February 1, 2017.

Table because, as described above, fee code PR sets forth a standard rate for removing liquidity from the Exchange.

<sup>14</sup> The Exchange does not propose [sic] to amend the rate for orders in securities priced below \$1.00 that yield fee codes EA or ER.

<sup>15</sup> As defined in the Exchange's fee schedule.

<sup>16</sup> As defined in the Exchange's fee schedule.

<sup>17</sup> As defined in the Exchange's fee schedule.

<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).

## 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>18</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>19</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 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 to be excessive. The Exchange also believes that each of the proposed amendments are non-discriminatory because each will apply uniformly to all Members.

### Standard Removal Rate

The Exchange believes that its proposal to increase the standard fee charged for orders that remove liquidity from the Exchange is reasonable and equitable because it will allow the Exchange to utilize the additional revenue to offset providing volume based enhanced rebates for removing liquidity as proposed herein. In addition, the Exchange notes that the proposed standard removal rate is consistent with Rule 610(c)(1) of Regulation NMS<sup>20</sup> and is equal to the standard removal rate charged by other exchange to remove liquidity in securities priced at or above \$1.00.<sup>21</sup>

### Fee Codes EA or ER

The Exchange believes that its proposal to increase the fees charged for Internalized Orders is reasonable and equitable because the charge for Members inadvertently matching with themselves will continue to be no more favorable than the Exchange's maker/taker spread enabling the Exchange to continue to discourage potential wash sales.<sup>22</sup> In addition, like as stated above

for the increase to the standard removal rate, the proposed increase will allow the Exchange to utilize the additional revenue to offset providing volume based enhanced rebates for removing liquidity as proposed herein.

### Step-Up Add Volume Tier

The Exchange believes that its proposed definition of Step-Up Add TCV and the new Step-Up Tier provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. 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 levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange.

In particular, the Exchange believes the definition of Step-Up Add TCV is equitable and reasonable as it is identical to the same defined term on BZX.<sup>23</sup> 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 provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will continue to provide Members with an incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the proposed Step-Up Tier is a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange further believes that the proposed Step-Up Tier represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier encourages Members to add increased liquidity to the EDGX Book<sup>24</sup> each month. The increased liquidity benefits all investors by deepening the Exchange's liquidity

favorable than the Exchange's prevailing maker/taker spread.

<sup>23</sup> See the BZX fee schedule available at [http://www.bats.com/us/equities/membership/fee\\_schedule/bzx/](http://www.bats.com/us/equities/membership/fee_schedule/bzx/).

<sup>24</sup> See Exchange Rule 1.5(d).

pool, 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. Specifically, the Exchange believes the level of the enhanced rebate provided by the tier reasonably reflects the criteria necessary to achieve the tier. For example, a Member would receive a rebate of \$0.0032 per share where they not only add an ADV equal to or greater than 0.40% of the TCV, but also has a Step-Up Add TCV from January 2017 equal to or greater than 0.10%.

### 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 in order to enhance its ability to compete with other exchanges. Rather, the proposal as a whole is a competitive proposal that is seeking further the growth of the Exchange. The Exchange has structured the proposed fees and rebates to attract certain additional volume in both Customer and certain Non-Customer 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 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 competitive standing in the financial markets. In particular, the Exchange believes that the proposed tiers 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, which will then further enhance the Exchange's ability to compete with other exchanges. Likewise, the proposed changes to the standard removal rates and rates for Internalized Trades should not have any burden on competition on competition [sic] as they are in line with that

<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78f(b)(4).

<sup>20</sup> 17 CFR 242.610(c)(1).

<sup>21</sup> See Nasdaq Stock Market LLC's fee schedule available at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>, NYSE Arca fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf), and the Bats BZX Exchange, Inc.'s ("BZX") fee schedule available at [http://www.bats.com/us/equities/membership/fee\\_schedule/bzx/](http://www.bats.com/us/equities/membership/fee_schedule/bzx/).

<sup>22</sup> The Exchange will continue to ensure that the fees applicable to Internalized Trades are no more

charged by other exchanger or is designed to continue to discourage potential wash sales.

*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>25</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>26</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-BatsEDGX-2017-09 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-2017-09. 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 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-2017-09, and should be submitted on or before March 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-03299 Filed 2-17-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 32479; File No. 812-14718]**

**Brinker Capital Destinations Trust, et al.; Notice of Application**

February 14, 2017.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6-07(2)(a), (b), and (c) of Regulation S-X ("Disclosure Requirements"). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

**APPLICANTS:** Brinker Capital Destinations Trust (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Brinker Capital, Inc., a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940 ("Brinker" or the "Adviser," and, collectively with the Trust, the "Applicants").

**FILING DATES:** The application was filed December 1, 2016, and amended on February 1, 2017 and February 10, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 14, 2017, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: Jason B. Moore, Brinker Capital Destinations Trust, 1055 Westlakes Drive, Berwyn, PA 19312; and John J. O'Brien, Esq., Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, PA 19103.

**FOR FURTHER INFORMATION CONTACT:** Jennifer O. Palmer, Senior Counsel, at (202) 551-5786, or Nadya Roytblat, Assistant Chief Counsel, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

**Summary of the Application**

1. The Adviser will serve as the investment adviser to the Subadvised Series pursuant to an investment advisory agreement with the Trust (the

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f).

<sup>27</sup> 17 CFR 200.30-3(a)(12).