

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81206; File No. SR-BatsBZX-2017-44]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Bats BZX Exchange, Inc.

July 25, 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 July 12, 2017, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") 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.bats.com](http://www.bats.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 to modify the tier-based incremental credits for Members that are Lead Market Makers ("LMMs") for their orders that provide displayed liquidity in the securities described under footnote 14.<sup>4</sup>

On April 17, 2014, the Exchange filed a proposal to adopt rules to create an LMM Program (the "Program") on an immediately effective basis.<sup>5</sup> The Program is designed to strengthen market quality for Exchange-listed Exchange Traded Products ("ETPs")<sup>6</sup> by offering enhanced pricing to Market Makers<sup>7</sup> registered with the Exchange<sup>8</sup> that are also registered as an LMM in an LMM Security<sup>9</sup> and meet certain minimum quoting standards ("Minimum Performance Standards").<sup>10</sup> In October 2015, the Exchange filed a proposed rule change with the Commission to adopt LMM credit tiers under part (B) of footnote 14 on an immediately effective basis.<sup>11</sup>

As described above, the Exchange offers tier-based incremental credits to Members that are LMMs for their orders that provide displayed liquidity pursuant to part (B) of footnote 14 of the fee schedule. Specifically, Members that are a Qualified LMM<sup>12</sup> in at least 25 LMM Securities receive an additional rebate per share ("LMM Credit") for orders that provide displayed liquidity in Tape B securities traded on the Exchange, including non-Exchange-listed securities, except that such LMM

Credits are not applied to the rebates provided to LMMs pursuant to part (A) of footnote 14 of the fee schedule (the "LMM Rebate"). Currently, the LMM Credits and volume thresholds associated with Tape B securities are as follows: (i) An LMM Credit of \$0.0001 per share where an LMM is a Qualified LMM in at least 25 ETPs; (ii) an LMM Credit of \$0.0002 per share where an LMM is a Qualified LMM in at least 50 ETPs; (iii) an LMM Credit of \$0.0003 per share where an LMM is a Qualified LMM in at least 75 ETPs; and (iv) an LMM Credit of \$0.0004 per share where an LMM is a Qualified LMM in at least 125 ETPs.

The Exchange proposes to increase these LMM Credits for Tape B securities and to create new LMM Credits for Tape A and Tape C securities. For Tape B securities, the Exchange is proposing to increase the LMM Credits as follows: (i) From an LMM Credit of \$0.0001 to \$0.0002 per share where an LMM is a Qualified LMM in at least 25 ETPs; (ii) from an LMM Credit of \$0.0002 to \$0.0004 per share where an LMM is a Qualified LMM in at least 50 ETPs; (iii) from an LMM Credit of \$0.0003 to \$0.0006 per share where an LMM is a Qualified LMM in at least 75 ETPs; and (iv) from an LMM Credit of \$0.0004 to \$0.0008 per share where an LMM is a Qualified LMM in at least 125 ETPs.

For Tape A and Tape C securities, the Exchange is proposing to create new LMM Credit Tiers such that a Member would receive: (i) An LMM Credit of \$0.0001 per share where an LMM is a Qualified LMM in at least 25 ETPs; (ii) an LMM Credit of \$0.0002 per share where an LMM is a Qualified LMM in at least 50 ETPs; (iii) an LMM Credit of \$0.0003 per share where an LMM is a Qualified LMM in at least 75 ETPs; and (iv) an LMM Credit of \$0.0004 per share where an LMM is a Qualified LMM in at least 125 ETPs.

Finally, the Exchange proposes to implement a cap of \$100,000 per Member on a monthly basis for additional rebates as part of the LMM Credit Tiers under part B of footnote 14.

#### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on September 1, 2017.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of

<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).

<sup>4</sup> See the Exchange's fee schedule available at [https://www.bats.com/us/equities/membership/fee\\_schedule/bzx/](https://www.bats.com/us/equities/membership/fee_schedule/bzx/).

<sup>5</sup> See Securities Exchange Act Release No. 72020 (April 25, 2014), 79 FR 24807 (May 1, 2014) (SR-BATS-2014-015).

<sup>6</sup> As defined in Exchange Rule 11.8(e)(1)(A), ETP means any security listed pursuant to Exchange Rule 14.11.

<sup>7</sup> As defined in Exchange Rule 1.5(l), Market Maker means a Member that acts as a Market Maker pursuant to Chapter XI.

<sup>8</sup> See Exchange Rule 11.5.

<sup>9</sup> As defined in Exchange Rule 11.8(e)(1)(C), LMM Security means an ETP that has an LMM.

<sup>10</sup> As defined in Exchange Rule 11.8(e)(1)(D), Minimum Performance Standards means a set of standards applicable to an LMM that may be determined from time to time by the Exchange.

<sup>11</sup> See Securities Exchange Act Release No. 76147 (October 14, 2015), 80 FR 63621 (October 20, 2015) (SR-BATS-2015-89).

<sup>12</sup> An LMM is a "Qualified LMM" in a security where it provides pricing for orders that add displayed liquidity in an LMM Security that meets the Minimum Performance Standards during the applicable billing month. See Exchange Rule 11.8(e).

<sup>13</sup> 15 U.S.C. 78f.

Section 6(b)(4),<sup>14</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 and it does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rebates are equitable and non-discriminatory in that they would apply uniformly to all Members.

The proposed changes are intended to encourage Members to promote price discovery and market quality across all Exchange-listed securities for the benefit of all market participants. The Exchange believes that increasing the LMM Credits for Tape B securities and offering LMM Credits in Tape A and Tape C securities provides greater incentives to Members to become LMMs in Exchange-listed ETPs, to satisfy the Minimum Performance Standards in ETPs each month, and to add liquidity in securities on the Exchange, and is therefore reasonable because the Exchange believes doing so would encourage more LMMs to register to quote and trade in as many Exchange-listed ETPs as possible. While the Exchange already offers LMM Credits in Tape B securities, increasing such rebates will further incentivize Members to become LMMs in Exchange-listed ETPs and provide additional liquidity in other ETPs generally. In particular, enhanced rebates based on the number of securities for which a Member is registered as an LMM, would provide an incentive for such Members not only to register as an LMM in more liquid securities, but also to register to quote in lower volume ETPs, which are traditionally less profitable for Market Makers than more liquid ETPs. Moreover, the Exchange believes that the proposed change will incentivize LMMs to register as an LMM in more ETPs, including less liquid ETPs and, thus, add more liquidity in securities to the benefit of all market participants. The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because they remain consistent with the market quality and competitiveness benefits associated with the fee program and because the magnitude of the additional rebate is not unreasonably high in comparison to the requirements associated with receiving such LMM Credit and the rebate paid with respect

to other displayed liquidity-providing orders.

The Exchange further believes that it is an equitable allocation of reasonable fees to offer different LMM Credit rebates between Tape B securities as compared to Tape A and Tape C securities. As described above, LMM Credits are designed to incentivize increased participation in the Exchange's LMM Program, but the Exchange believes that they will also simultaneously incentivize higher trading volumes and enhanced market quality by LMMs in all securities for which the LMM Credits apply. While the Exchange believes that offering LMM Credits on each of Tape A, Tape B, and Tape C securities will enhance market quality on all securities traded on the Exchange, by offering higher LMM Credits for Tape B securities, the Exchange will further incentivize increased liquidity provision in Exchange-listed securities and for ETPs generally, which further supports the purpose of the LMM Credits.

Finally, the Exchange believes that it is an equitable allocation of reasonable dues, fees and other charges among its Members and is not unfairly discriminatory to implement a monthly cap of \$100,000 per Member for additional rebates as part of the LMM Credit Tiers under part B of footnote 14. Such a cap will help ensure that it will remain financially viable for the Exchange to continue to offer the LMM Credit Tiers. Further, the Exchange believes that the proposed cap is high enough as to not meaningfully reduce the incentives for Members to become an LMM in Bats-listed securities or significantly mitigate any of the market quality benefits to Bats-listed securities or other securities traded on the Exchange that were described above.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Similarly, the Exchange does not believe that the proposed change to the Exchange's pricing structure burden competition, but instead, that they enhance competition as they are intended to increase the competitiveness of the Exchange by modifying pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange.

The Exchange does not believe that the proposed increase in rebates will burden competition, but instead, enhances competition, as these changes

are intended to increase LMM participation in securities, to incentivize Members to register as LMMs in Exchange-listed ETPs, and to encourage Members to meet the Minimum Performance Standards in such ETPs. As such, the proposal is a competitive proposal that is intended to add additional liquidity to the Exchange, which will, in turn, benefit the Exchange and all Exchange participants. Moreover, the Exchange does not believe that the proposed amendments would burden intramarket competition as they would be available to all Members uniformly.

#### *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 unsolicited 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>15</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>16</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 proposal 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 No. SR-BatsBZX-2017-44 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.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

<sup>16</sup> 17 CFR 240.19-4(f).

All submissions should refer to File No. SR-BatsBZX-2017-44. 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 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 No. SR-BatsBZX-2017-44 and should be submitted on or before August 21, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32742; File No. 812-14740]

### Capital Southwest Corporation

July 25, 2017.

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

**ACTION:** Notice.

Notice of an application for an order under section 23(c)(3) of the Investment Company Act of 1940 (the "Act") for an exemption from section 23(c) of the Act.

**SUMMARY OF THE APPLICATION:** Capital Southwest Corporation ("Company")

requests an order to amend a prior order<sup>1</sup> that permits the Company to issue Restricted Stock<sup>2</sup> to the Company's Participants<sup>3</sup> under the terms of its 2010 Restricted Stock Award Plan, as amended on January 25, 2017 (the "Amended Plan"). The Company seeks to amend the Prior Order to permit it to engage in certain transactions in connection with the Amended Plan and the Company's 2009 Stock Incentive Plan, as amended on May 23, 2017 (the "Amended 2009 Plan") that may constitute purchases by the Company of its own securities within the meaning of section 23(c) of the Act.

**APPLICANT:** Capital Southwest Corporation.

**FILING DATES:** The application was filed on January 30, 2017, and amended on May 23, 2017, June 19, 2017, and July 19, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 21, 2017 and should be accompanied by proof of service on applicant, 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, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicant: Bowen S. Deihl, Chief Executive Officer and President, Capital Southwest Corporation, 5400 Lyndon B Johnson Freeway, Suite 1300, Dallas, Texas 75240.

**FOR FURTHER INFORMATION CONTACT:** Asen Parachkevov, Senior Counsel, or Robert Shapiro, Branch Chief, 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

<sup>1</sup> Investment Company Act Release Nos. 29450 (September 29, 2010) (notice) and 29491 (October 26, 2010) (order) (the "Prior Order").

<sup>2</sup> As defined in the Prior Order.

<sup>3</sup> As defined in the Prior Order.

Web site by searching for the file number, or for the applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicant's Representations

1. The Company is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act. The Amended Plan authorizes the Company, among other things, to grant to Participants, in accordance with the terms and conditions of the Prior Order, Restricted Stock. Further, under the terms of the Amended 2009 Plan, the Company is authorized, among other things to grant to Participants options to acquire shares of the Company's common stock ("Common Stock"). The Company seeks to amend the Prior Order to permit it to withhold shares of the Company's Common Stock or purchase shares of Common Stock from the Participants to satisfy tax withholding obligations related to the vesting of Restricted Stock granted pursuant to the Amended Plan or the exercise of options to purchase shares of Common Stock granted pursuant to the Amended 2009 Plan. In addition, the Company seeks to permit employees to pay the exercise price of options to purchase shares of Common Stock granted pursuant to the Amended 2009 Plan with shares of Common Stock already held by them or pursuant to a net share settlement feature.<sup>4</sup> The Company will continue to comply with all of the terms and conditions of the Prior Order.

2. On the date that the Restricted Stock vests (assuming no election has been made under section 83(b) of the Internal Revenue Code of 1986, as amended), the shares are released to the Participant and are available for sale or transfer (subject to the Company's share retention guidelines).<sup>5</sup> The Company

<sup>4</sup> Net share settlement allows the Company to deliver directly to the optionee only the number of shares underlying the portion of the option exercised less such number of shares as is equal to (X) the aggregate exercise price for the portion of the option being exercised divided by (Y) the Fair Market Value (as defined below) on the date of exercise. The Company states that the Compensation Committee of the Board has determined to use the closing sales price of the Common Stock on the NASDAQ Global Select Market (or any other such exchange on which the Common Stock may be traded in the future) on the date of the applicable transaction or other event as the fair market value ("Fair Market Value") with respect to the Common Stock for all purposes under the Amended 2009 Plan.

<sup>5</sup> During the restriction period (*i.e.*, prior to the lapse of the forfeiture restrictions), the Restricted Stock may not be sold, transferred, pledged,

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