SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78517; File No. SR-BatsBZX-2016-44)

August 9, 2016

Self-Regulatory Organizations; Bats BZX 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"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 29, 2016, 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 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[3] and Rule 19b-4(f)(2) thereunder,[4] 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[5] and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(ii).

4 17 CFR 240.19b-4(f)(2).

5 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, 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 modify its fee schedule applicable to the Exchange's options platform ("BZX Options") to: (i) increase the fee for orders that yield fee code NP, which is appended Non-Customer[6] orders in Non-Penny Pilot Securities;[7] (ii) add three new tiers under new footnote 13 entitled, "Non-Customer Non-Penny Pilot Take Volume Tier"; (iii) eliminate Tier 4 from footnote 5, Quoting Incentive Program ("QIP") Tier; and (iv) modify the billing policy for the logical port fees.

Fee code NP

Fee code NP is appended to Non-Customer orders that remove liquidity in Non-Penny Pilot Securities on the Exchange. Orders that yield fee code NP currently incur a fee of $0.99

6 As defined in the Exchange's fee schedule available at http://www.batsoptions.com/support/fee_schedule/bzx/.

7 Id.

per contract. The Exchange is proposing to increase this fee to $1.07 per contract, which as explained below, is commensurate with industry standards. In conjunction with this change, the Exchange also proposes to update the Standard Rate table.

Non-Customer Non-Penny Pilot Take Volume Tier

The Exchange proposes to add three tiers under new footnote 13 entitled, "Non-Customer Non-Penny Pilot Take Volume Tier". Under the proposed new tiers, orders that yield fee code NP would receive a discounted rate from the proposed $1.07 fee discussed above. The Exchange proposes to add three Non-Customer Non-Penny Pilot Take Volume Tiers, as set forth below.

- Tier 1, would provide a discounted rate of $1.02 in orders where: the (1) Member has an ADAV[8] in Customer[9] orders equal to or greater than 0.60% of average TCV[10]; (2) Member has an ADAV in Market Maker[11] orders equal to or greater than 0.30% of average TCV; and (3) Member has on Exchange's equity platform ("BZX Equities") an ADAV[12] equal to or greater than 0.30% of average TCV.
- Tier 2, would provide a discounted rate of $1.02 in orders where a Member has an ADAV in Customer orders equal to or greater than 1.00% of average TCV.
- Tier 3, would provide a discounted rate of $1.01 in orders where a Member has an ADAV in Customer orders equal to or greater than 1.30% of average TCV.

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8 Id.

9 Id.

10 Id.

11 As defined in the Exchange's fee schedule available at http://www.batsoptions.com/support/fee_schedule/bzx/.

12 As defined in the BZX Equities' fee schedule available at http://batstrading.com/support/fee_schedule/bzx/.

The Exchange notes that the criteria necessary to achieve the discounted rate under Tiers 1, 2, and 3 proposed above mirrors the criteria required by the existing Non-Customer Penny Pilot Take Volume Tiers under footnote 3 of the Exchange's fee schedule. In conjunction with the addition of footnote 13, the Exchange also proposes to append footnote 13 to fee code NP within the Fee Codes and Associate Fees table and update the Standard Rates table.

Quoting Incentive Program ("QIP") Tier

The Exchange currently offers four QIP tiers which provide an additional rebate per contract for an order that adds liquidity to the BZX Options Book in options classes in which a Member is a Market Maker registered on BZX Options pursuant to Rule 22.2. The Market Maker must be registered with BZX Options in an average of 20% or more of the associated options series in a class in order to qualify for QIP rebates for that class. Under the QIP Tiers, a Market Maker receives an additional rebate ranging from $0.02 to $0.06 per contract where that Market Maker satisfies certain ADV[13] thresholds. Under the highest tier, QIP Tier 4, a Market Maker receives an additional rebate of $0.06 per contract where that Market Maker has an ADV equal to or greater than 3.5% of average TCV. The Exchange proposes to eliminate QIP Tier 4 because the rebate has not achieved the desired effect, despite being designed to incentivize Market Markers to add liquidity to the BZX Options Book.

Logical Port Fees

A logical port represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-Member and grants that Member or non-Member the ability to operate a specific

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13 As defined in the Exchange's fee schedule available at http://www.batsoptions.com/support/fee_schedule/bzx/.

application, such as FIX order entry or PITCH data receipt. The Exchange's Multicast PITCH data feed is available from two primary feeds, identified as the "A feed" and the "C feed", which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant fees, identified as the "B feed" and the "D feed." The Exchange also offers a bulk-quoting interface which allows Users[14] of BZX Options to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting. The bulk-quoting application for BZX Options is a particularly useful feature for Users that provide quotations in many different options.

The Exchange currently charges for logical ports (including Multicast PITCH Spin Server and GRP ports) $650 per port per month and $1,500 per month for ports with bulk quoting capabilities. Where a User subscribes to more than five ports with bulk quoting capabilities, the Exchange charges for each port in excess of five $2,000 per logical port per month for logical ports with bulk quoting capabilities. Logical port fees are limited to logical ports in the Exchange's primary data center and no logical port fees are assessed for redundant secondary data center ports. The Exchange assesses the monthly per logical port fees to all Member's and non-Member's logical ports.

The Exchange proposes to clarify within its fee schedule how fees for logical ports may be pro-rated. As proposed, new requests will be pro-rated for the first month of service. Cancellation requests are billed in full month increments as firms are required to pay for the service for the remainder of the month, unless the session is terminated within the first month of service.

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14 A User on BZX Options is either a member of BZX Options or a sponsored participant who is authorized to obtain access to the Exchange's system pursuant to BZX Rule 11.3. See Exchange Rule 1.5(ee) [sic].

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 exchange, and, in particular, with the requirements of Section 6 of the Act.[15] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] 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.

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.

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[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

Fee code NP

The Exchange believes that its proposal to change the standard fee charged for Customer orders that remove liquidity in Non-Customer Non-Penny Pilot Securities from $0.99 to $1.07 per contract is reasonable, fair and equitable because, while the change marks an increase in fees for orders in Non-Penny Pilot Securities, such proposed fees remain consistent with pricing previously offered by the Exchange as well as competitors of the Exchange and does not represent a significant departure from the Exchange's general pricing structure.[17] Additionally, this pricing structure will allow the Exchange to earn additional revenue that can be used to offset the addition of new pricing incentives, including those introduced as part of this proposal. The proposed rate change is also not unfairly discriminatory because it will apply equally to all Members.

Non-Customer Non-Penny Pilot Take Volume Tier

The Exchange believes the volume-based discounted rates offered in the Non-Customer Non-Penny Pilot Take Volume Tiers are reasonable, fair, equitable and non-discriminatory for the reasons set forth above with respect to volume-based pricing generally, such changes will apply equally to all participants, and the change is intended to incentivize participants to further contribute to market quality on the Exchange. Moreover, the proposed changes will provide Members with an increased incentive to interact with orders in Non-Penny Pilot securities on the Exchange. The Exchange believes this will enhance market quality for all market participants

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17 NYSE Arca, Inc. ("NYSE Arca") charges a fee of $1.08 to non-customer orders that remove liquidity in Non-Penny Pilot Securities. See NYSE Arca Options fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf. Similarly, the Nasdaq Stock Market LLC ("Nasdaq") charges a fee of $1.10 to non-customer orders that remove liquidity in Non-Penny Pilot Securities. See Nasdaq Options fee schedule available at http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing.

and encourage increased participation of other orders wanting to interact with such Non-Customer Non-Penny Pilot orders, to further the benefit of all market participants.

The Exchange also believes that the proposed new tiers remain consistent with pricing previously offered by the Exchange as well as competitors of the Exchange. The Exchange notes that the criteria required to achieve proposed Tiers 1, 2, and 3 mirror those required to achieve the Non-Customer Penny-Pilot Take Volume Tiers 1, 2, and 3 under footnote 3 of the Exchange's fee schedule. Furthermore, the criteria required to achieve proposed Tier 1, 2, and 3 mirrors that required by the Customer Add Volume Tier 5, 4, and 6, respectively.

The Exchange further believes that the criteria necessary to achieve Tier 1 of the Non-Customer Non-Penny Pilot Take Volume Tier is reasonable, fair, equitable and non-discriminatory because to the extent a Member participates on the Exchange but not on BZX Equities [sic] based on the overall benefit to the Exchange resulting from the success of BZX Equities. 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 BZX Equities or not. The proposed pricing program is also fair and equitable in that membership in BZX Equities is available to all Members which would provide them with access to the benefits provided by the proposed tier, as described above, even where a Member of BZX Equities is not necessarily eligible for the proposed increased rebates on the Exchange.

<u>QIP Tier</u>

The Exchange believes that its proposal to eliminate QIP Tier 4 under footnote 5 represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. As described above, the additional rebates offered under this tier is not affecting Members' behavior in the manner originally conceived by the Exchange.

Additionally, the Exchange currently provides three other QIP Tiers which offer additional rebates to qualifying Members adding liquidity. While the Exchange acknowledges the benefit of Members entering orders which add liquidity, the Exchange has determined that it is providing additional rebates for liquidity that would be added regardless of whether the tier existed. By providing this rebate, the Exchange is not only offering a rebate for orders that would add liquidity without being incentivized to do so, but also bypassing the opportunity to offer other rebates or reduced fees which could incentivize other behavior that would enhance market quality on the Exchange and benefit all Members. As such, the Exchange believes the proposed elimination of the QIP Tier 4 would be non-discriminatory in that it currently applies equally to all Members and, upon elimination, would no longer be available to any Members. Further, it will allow the Exchange to explore other ways in which it may enhance market quality for all Members.

Logical Port Fees

The Exchange believes that the proposed clarification on how logical port fees may be pro-rated is consistent with Section 6(b)(4) of the Act,[18] 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 proposed rule change seeks to provide clarity to subscribers regarding the Exchange's pro-rata billing policy for logical ports by describing how logical port fees may be pro-rated for a new request and upon cancellation. The Exchange believes that the proposed pro-rata billing of fees for logical ports is reasonable in

[18] 15 U.S.C. 78f(b)(4).

that it is similar to how port fees are pro-rated by the Nasdaq Stock Market LLC ("Nasdaq").[19]

The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of Members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected Members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, an exchange charging excessive fees would stand to lose not only connectivity revenues, but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

(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

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19 See Nasdaq Price List – Trade Connectivity available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#connectivity. The Exchange notes that, unlike as proposed by the Exchange, Nasdaq does not pro-rate where the session is terminated within the first month of service

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. 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 changes to the Exchange's tiered pricing structure burdens competition, but instead enhances competition by increasing the competitiveness of the Exchange. 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.

With regard to the proposed logical port fee amendment, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including logical port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members and non-Members equally.

(C) <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others</u>

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[20] and paragraph (f) of Rule 19b-4 thereunder.[21] 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. Please include File Number SR-BatsBZX-2016-44 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.

All submissions should refer to File Number SR-BatsBZX-2016-44. 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

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20 15 U.S.C. 78s(b)(3)(A).

21 17 CFR 240.19b-4(f).

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-BatsBZX-2016-44 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.[22]

Robert W. Errett
Deputy Secretary

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[22] 17 CFR 200.30-3(a)(12).