SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79769; File No. SR-BatsEDGX-2017-01)

January 10, 2017

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Fee Schedule of the Exchange's Options Platform to Adopt Fees for its Recently Adopted Bats Auction Mechanism

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 3, 2017, Bats EDGX Exchange, Inc. ("EDGX" 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 modify the Fee Schedule applicable to the Exchange's options platform ("EDGX Options") to adopt fees for its recently adopted Bats Auction Mechanism ("BAM", "BAM Auction", or "Auction").[3]

The text of the proposed rule change is available at the Exchange's website at 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

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 79718 (January 3, 2017) (SR-BatsEDGX-2016-41), available at: https://www.sec.gov/rules/sro/batsedgx.shtml.

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

Background

The Exchange proposes to modify the Fee Schedule applicable to the Exchange's options platform ("EDGX Options") to adopt fees for its recently adopted Bats Auction Mechanism ("BAM", "BAM Auction", or "Auction"). BAM includes functionality in which a Member (an "Initiating Member") may electronically submit for execution an order it represents as agent on behalf of a Priority Customer,[4] broker dealer, or any other person or entity ("Agency Order") against principal interest or against any other order it represents as agent (an "Initiating Order") provided it submits the Agency Order for electronic execution into the BAM Auction pursuant Rule 21.19. All options traded on EDGX Options are eligible for BAM.

As additional background for the fees described below, the Exchange notes that any person or entity other than the Initiating Member may submit responses to an Auction. A BAM Auction takes into account responses to the Auction as well as interest resting on the Exchange's order book at the conclusion of the auction ("unrelated orders"), regardless of whether such

[4] The term "Priority Customer" means any person or entity that is not: (A) a broker or dealer in securities; or (B) a Professional. The term "Priority Customer Order" means an order for the account of a Priority Customer. See Rule 16.1(a)(45). A "Professional" is any person or entity that: (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members. See Rule 16.1(a)(46).

unrelated orders were already present on the Exchange's order book when the Agency Order was received by the Exchange or were received after the Exchange commenced the applicable Auction. If contracts remain from one or more unrelated orders at the time the Auction ends, they will be considered for participation in the BAM order allocation process.

Definitions

In connection with the fee proposal, the Exchange proposes to adopt definitions necessary for BAM pricing. First, the Exchange proposes to adopt defined terms of "BAM" and "BAM Auction" to refer to Auctions on the Fee Schedule. Second, the Exchange proposes to adopt the defined term "BAM Agency Order", which would be defined as an order represented as agent by a Member on behalf of another party, and submitted to BAM for potential price improvement pursuant to Rule 21.19. Third, the Exchange proposes to adopt the defined term "BAM Contra Order" or "Initiating Order",[5] which would be defined as an order submitted by a Member entering a BAM Agency Order for execution within BAM, that will potentially execute against the BAM Agency Order pursuant to Rule 21.19. Fourth, the Exchange proposes to adopt the defined term "BAM Customer-to-Customer Immediate Cross", which would provide a cross-reference to the process defined in Rule 21.19(c).[6] Finally, the Exchange proposes to adopt the defined term "BAM Responder Order", which would be defined to include any order submitted in response to and specifically designated to participate in a BAM Auction as well as unrelated orders that are received by the Exchange after a BAM Auction has begun.

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5 The Exchange notes that it has proposed to include the term Initiating Order on the Fee Schedule even though it is not currently used elsewhere on the Fee Schedule because this is the term used for a BAM Contra Order within Rule 21.19.

6 As set forth in Rule 21.19(c), in lieu of the procedures set forth in paragraphs (a) and (b) of Rule 21.10 [sic], an Initiating Member may enter an Agency Order for the account of a Priority Customer paired with an order for the account of a Priority Customer and such paired orders will be automatically executed without an Auction, subject to the conditions set forth in Rule 21.19(c)(1)-(3).

BAM Pricing

The Exchange proposes to adopt six new fee codes in connection with BAM, which would be added to the Fee Codes and Associated Fees table of the Fee Schedule. These fee codes represent the fees applicable to BAM, as described below. In addition, the Exchange proposes to adopt new footnote 6, which would again summarize BAM fees and rebates in a table form, would provide additional details regarding the applicability of such fees and rebates, and would include a provision regarding BAM Break-Up Credits.

The Exchange proposes to adopt two fee codes for BAM Agency Orders, fee code BA and fee code BC, which would be applicable to Non-Customer[7] and Customer[8] orders, respectively. As proposed, the Exchange would apply fee code BA to Non-Customer BAM Agency Orders that are executed in an Auction and would charge such orders a fee of $0.20 per contract. The Exchange would apply fee code BC to Customer BAM Agency Orders that are executed in an Auction and would provide such orders a rebate of $0.14 per contract.

Next, the Exchange proposes to adopt fee code BB, which would apply to a BAM Contra Order executed in an Auction and would be charged a fee of $0.04 per contract.

The Exchange also proposes to adopt fee codes BD and BE, which would apply to BAM Responder Orders in Penny Pilot Securities[9] and Non-Penny Pilot Securities,[10] respectively. As proposed, the Exchange would apply fee code BD or BE to a BAM Responder Order that is

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7 As defined in the Exchange's Fee Schedule, available at: http://www.bats.com/us/options/membership/fee_schedule/edgx/.

8 As defined in the Exchange's Fee Schedule, available at: http://www.bats.com/us/options/membership/fee_schedule/edgx/.

9 The term "Penny Pilot Security" applies to those issues that are quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

10 The term "Non-Penny Pilot Security" applies to those issues that are not Penny Pilot Securities quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

executed in an Auction. The Exchange proposes to charge a fee of $0.50 per contract for executions yielding fee code BD and to charge a fee of $1.05 per contract for executions yielding fee code BE.

Finally, the Exchange proposes to adopt fee code CC for all executions in a BAM Customer-to-Customer Immediate Cross. As proposed, all executions yielding fee code CC would be provided free of charge.

As discussed above, in addition to setting forth the proposed fees and rebates in the Fee Codes and Associated Fees table, the Exchange proposes to adopt footnote 6 to again summarize BAM fees and rebates in a table form that is organized differently in order to provide clarity to Users.[11] Footnote 6 would be organized similar to existing footnotes on the Fee Schedule and would first make clear that the footnote is applicable to the following six fee codes: BA, BB, BC, BD, BE and CC. The footnote would then re-state the fees applicable to BAM, including a lead-in to the table that would state that the fees and rates are applicable when a BAM Agency Order trades in a BAM Auction against either a BAM Contra Order or a BAM Responder Order.

The proposed table would horizontally categorize the types of orders that could be executed within BAM, namely "Agency" (i.e., BAM Agency Orders), "Contra" (i.e., BAM Contra Orders) and "Responder" (i.e., BAM Responder Orders). Further, within the Responder category, the Exchange would differentiate between Penny Pilot Securities and Non-Penny Pilot Securities (whereas it would not for the other two categories because there is no applicable distinction). Vertically, the table would be organized by Customer, Non-Customer and Customer-to-Customer Immediate Cross.

The Exchange also proposes to make clear with respect to BAM Agency Orders that

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11 The term "Users" applies to any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.

when a BAM Agency Order executes against one or more resting orders that were already on the Exchange's order book when the BAM Agency Order was received by the Exchange, the BAM Agency Order and the resting order(s) would receive the Standard Fee Rates. Specifically, and as described above, it is possible for unrelated interest that is already present on the Exchange's order book when a BAM Agency Order is received to be included in an Auction. As proposed, footnote 6 will make clear that this will not alter the fee structure for such execution and instead the Exchange will charge a fee or provide a rebate to each side of the transaction as if it were a transaction occurring on the Exchange's order book pursuant to the Exchange's normal order handling methodology and not in BAM. This stands in contrast to BAM Responder Orders, which, as defined, include unrelated orders that are received by the Exchange after a BAM Auction has begun and which would be charged or provided rebates based specifically on BAM pricing.

The Exchange also proposes to make clear with respect to Customer orders that such orders will be charged or provided rebates based on the proposed pricing for BAM (e.g., will yield fee code BC if submitted as a BAM Agency Order, will yield fee code BB if submitted as a BAM Contra Order, etc.) but that fee code CC would be assigned when both the BAM Agency Order and the BAM Contra Order are Customer orders.

In addition, the Exchange proposes to adopt under footnote 6 BAM Break-Up Credits. As proposed, the Exchange will apply a BAM Break-Up Credit to the Member that submitted a BAM Agency Order, including a Member who routed an order to the Exchange with a Designated Give Up (as described in further detail below), when the BAM Agency Order trades with a BAM Responder Order. As proposed, the BAM Break-Up Credit provided with respect to a BAM Auction in a Penny Pilot Security would be $0.25 per contract and the BAM Break-Up

Credit provided with respect to a BAM Auction in a Non-Penny Pilot Security would be $0.60 per contract.

Tiered Pricing Incentives

In order to encourage the use of BAM, the Exchange proposes to adopt new tiers under footnotes 1 and 2 of the Fee Schedule, which are similar to existing tiers but with an enhanced rebated to incentivize the submission of BAM Agency Orders.

Fee codes PC and NC are currently appended to all Customer orders in Penny Pilot Securities and Non-Penny Pilot Securities, respectively, and result in a standard rebate of $0.05 per contract. Instead of the standard rebate provided to Customer orders, Members are able to receive enhanced rebates for Customer orders to the extent they satisfy monthly volume criteria. The Exchange currently offers five Customer Volume Tiers pursuant to footnote 1. For instance, pursuant to Customer Volume Tier 5, a Member will receive an enhanced rebate of $0.21 per contract where the Member has an ADV[12] in: (i) Customer orders equal to or greater than 0.05% of average OCV[13]; and (ii) Customer or Market Maker[14] orders equal to or greater than 0.35% of average OCV. To encourage the entry of BAM Agency Orders to the Exchange, the Exchange proposes to adopt Customer Volume Tier 6, which would be identical to Tier 5 but would instead provide an enhanced rebate of $0.25 per contract for Customer orders to the extent a Member also has an ADV in BAM Agency Orders equal to or greater than 1 contract (in addition to the volume criteria described above with respect to Tier 5).

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12 As defined in the Exchange's Fee Schedule, available at: http://www.bats.com/us/options/membership/fee_schedule/edgx/.

13 As defined in the Exchange's Fee Schedule, available at: http://www.bats.com/us/options/membership/fee_schedule/edgx/.

14 As defined in the Exchange's Fee Schedule, available at: http://www.bats.com/us/options/membership/fee_schedule/edgx/.

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 orders that yield fee codes PM or NM upon satisfying the monthly volume criteria required by the respective tier. For instance, pursuant to Market Maker Volume Tier 7, a Member will be charged a reduced fee of $0.03 per contract where the Member has: (i) Customer orders equal to or greater than 0.05% of average OCV; and (ii) Customer or Market Maker orders equal to or greater than 0.35% of average OCV. To encourage the entry of BAM Agency Orders to the Exchange, the Exchange proposes to adopt Market Maker Volume Tier 8, which would be identical to Tier 7 but would instead provide a reduced fee of $0.02 per contract for Market Maker orders to the extent a Member also has an ADV in BAM Agency Orders equal to or greater than 1 contract (in addition to the volume criteria described above with respect to Tier 7).

Designated Give Up Footnote

Footnote 5 of the Fee Schedule currently specifies that when order is submitted with a Designated Give Up, as defined in Rule 21.12(b)(1), the applicable rebates for such orders when executed on the Exchange (yielding fee code NC or PC)[15] are provided to the Member who routed the order to the Exchange. Pursuant to Rule 21.12, which specifies the process to submit an order with a Designated Give Up, a Member acting as an options routing firm on behalf of one or more other Exchange Members (a "Routing Firm") is able to route orders to the Exchange and to immediately give up the party (a party other than the Routing Firm itself or the Routing Firm's own clearing firm) who will accept and clear any resulting transaction. Because the

[15] Fee codes NC and PC are appended to Customer orders in Non-Penny Pilot and Penny Pilot Securities, respectively. Id.

Routing Firm is responsible for the decision to route the order to the Exchange, the Exchange provides such Member with the rebate when orders that yield fee code NC or PC are executed.

In connection with the adoption of fees applicable to BAM, the Exchange proposes to add new fee code BC to the lead-in sentence of footnote 5 and to append footnote 5 to fee code BC in the Fee Codes and Associated Fees table of the Fee Schedule. In addition, the Exchange proposes to include reference to Routing Firms (i.e., a Member who routed an order to the Exchange with a Designated Give up) in the proposed BAM Break-Up Credit section of footnote 6, to make clear that a Routing Firm will be provided any applicable BAM Break-Up Credits. Similar to the provision of a rebate to a Routing Firm who routed an order to the Exchange to execute directly on the Exchange's order book, the Exchange believes that a Routing Firm that routed a BAM Agency Order to the Exchange should be provided applicable rebates, including any BAM Break-Up Credits, based on the Routing Firm's decision to route the order to the Exchange.

Implementation Date

The Exchange proposes to implement the proposed changes immediately.[16]

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.[17] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[18]

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16 The Exchange notes that it previously adopted fee changes effective January 3, 2017, and thus, has not proposed to modify the date of the Fee Schedule. See SR-BatsEDGX-2016-75, available at: http://www.bats.com/us/options/regulation/rule_filings/edgx/.

17 15 U.S.C. 78f.

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

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's proposal establishes fees and rebates regarding BAM, which promotes price improvement to the benefit of market participants. The Exchange believes that BAM will encourage market participants, and in particular liquidity providers on the Exchange, to compete vigorously to provide opportunities for price improvement in a competitive auction process. The Exchange believes that its proposal will allow the Exchange to recoup the costs associated with BAM while also incentivizing its use.

The Exchange is adopting the proposed fees and rebates at this time because it believes that the associated revenue will allow it to promote and maintain BAM, which is beneficial to market participants.

In sum, the Exchange believes that the proposed fee and rebate structure is designed to promote BAM and, in particular, to attract Customer liquidity, which benefits all market participants by providing additional trading opportunities. This attracts liquidity providers and an increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow originating from other market participants.

Moreover, the Exchange believes that charging market participants, other than Customers, a higher effective rate for certain BAM transactions is reasonable, equitable, and not unfairly discriminatory because these types of market participants are more sophisticated and have higher levels of order flow activity and system usage. Facilitating this level of trading activity requires a greater amount of system resources than that of Customers, and thus, generates greater ongoing operational costs for the Exchange. The proposed fees and rebates, which are further discussed below, will allow the Exchange to promote and maintain BAM, which is beneficial to market participants.

<u>BAM Agency Orders and BAM Contra Orders</u>

With respect to the proposal to adopt a rebate for Customer BAM Agency Orders ($0.14 per contract) and adopt fees for both Non-Customer BAM Agency Orders ($0.20 per contract) and all BAM Contra Orders ($0.04 per contract), the Exchange believes this is reasonable because it encourages participation in BAM by offering rates that are equivalent to or better than most other price improvement auctions offered by other options exchanges.[19] The rebate for Customer BAM Agency Orders is designed to encourage Customer orders entered into BAM, which is reasonable for the reasons further discussed below. The proposed fees for Non-Customer BAM Agency Orders and BAM Contra Orders are also reasonable because the associated revenue will allow the Exchange to promote and maintain BAM, and continue to enhance its services.

Providing Customers a rebate for BAM Agency Orders, while assessing Non-Customers a fee for BAM Agency Orders, is reasonable because of the desirability of Customer activity. The proposed new fees and rebates for BAM are generally intended to encourage greater Customer trade volume to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers and other liquidity providers. An increase in

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[19] <u>See</u> Miami International Securities Exchange, LLC ("MIAX") Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 [sic] FR 52785 (September 4, 2014) (SR-MIAX-2015-45 [sic]) (notice of filing and immediate effectiveness regarding MIAX PRIME). <u>See</u> <u>also</u>, <u>e.g.</u>, NYSE MKT LLC ("NYSE Amex Options") Fee Schedule and NASDAQ OMX BX, Inc. ("BX Options") Fee Schedule.

the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The practice of incentivizing increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity providers is, and has been, commonly practiced in the options markets, and the Exchange.[20] The proposed fee and rebate schedule similarly attracts Customer order flow.

The proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.[21] Other competing exchanges offer different fees and rebates for agency orders, contra-side orders, and responder orders to the auction in a manner similar to the proposal.[22] Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.[23] As proposed, all applicable fees and rebates are within the range of fees and rebates for executions in price improvement mechanisms assessed by other exchanges that are currently employing similar fee structures for price improvement mechanisms.

The fee and rebate schedule as proposed continues to reflect differentiation among different market participants typically found in options fee and rebate schedules.[24] The

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20 See Exchange's Fee Schedule, available at: http://www.bats.com/us/options/membership/fee_schedule/edgx/; see also, e.g., MIAX Fee Schedule, NYSE Amex Options Fee Schedule, Nasdaq Options Market ("NOM") Fee Schedule.

21 See MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 [sic] FR 52785 (September 4, 2014) (SR-MIAX-2015-45 [sic]) (notice of filing and immediate effectiveness regarding MIAX PRIME). See also, e.g., NYSE Amex Options Fee Schedule and BX Options Fee Schedule.

22 Id.

23 Id.

24 See Exchange's Fee Schedule, available at: http://www.bats.com/us/options/membership/fee_schedule/edgx/; see also, e.g., MIAX

Exchange believes that the differentiation is reasonable and notes that unlike others (e.g., Customers) some market participants like EDGX Options Market Makers commit to various obligations. For example, transactions of an EDGX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.[25] Further, all Market Makers are designated as specialists on EDGX Options for all purposes under the Act or rules thereunder.[26] For BAM Agency Orders, establishing a rebate for Customer orders and a fee for Non-Customer Orders is equitable and not unfairly discriminatory. This is because the Exchange's proposal to provide rebates and assess fees will apply the same to all similarly situated participants. Moreover, all similarly situated BAM Agency Orders are subject to the same proposed fee schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the proposed fee for BAM Agency Orders is equitable and not unfairly discriminatory because, while other market participants (Non-Customers) will be assessed a fee, Customers will receive a rebate because an increase in Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads.

Customer-to-Customer Immediate Cross

With respect to the Customer-to-Customer Immediate Cross, establishing no Customer fee or rebate for either side of the transaction, is also reasonable, equitably allocated and not unreasonably discriminatory because it still encourages the entry of Customer orders to the

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Fee Schedule, NYSE Amex Options Fee Schedule, BX Options Fee Schedule and NOM Fee Schedule.

25 See Exchange Rule 22.5, entitled "Obligations of Market Makers".

26 See Exchange Rule 22.2, entitled "Options Market Maker Registration and Appointment".

Exchange while treating, from the Exchange's perspective, each side of the order neutrally rather than providing one Customer a rebate but charging another Customer a fee.

BAM Responder Orders and Other Unrelated Orders

For BAM Responder Orders, establishing that there will be a $0.50 fee per contract for orders in Penny Pilot Securities and a $1.05 fee per contract for orders in Non-Penny Pilot Securities, is reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. The proposed fee and rebate schedule is also reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.[27] Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal.[28]

For BAM Responder Orders, establishing a fee for such orders is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess such fee will apply the same to all participants and will vary only based on whether the security is a Penny Pilot Security or a Non-Penny Pilot Security. Moreover, all BAM Responder Orders are subject to the same proposed fee schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange further believes its proposal represents a reasonable and equitable allocation of dues and fees in that the proposal would treat an unrelated order as well as a BAM Agency Order that executes against such order differently depending on whether the unrelated order was already resting on the Exchange's order book at the time the BAM Agency Order was

27 See NYSE Amex Options Fee Schedule; see also, e.g., MIAX Fee Schedule and BX Options Fee Schedule.

28 Id.

received or was received after the BAM Auction had begun.

As proposed, an unrelated order would be considered a BAM Responder Order if received after the BAM Auction had commenced. As a result, both the BAM Agency Order executing against such order and such order itself would be assessed fees and provided rebates according to the proposed BAM pricing. The Exchange believes this is a reasonable and equitable allocation of dues and fees, and is not unreasonably discriminatory, because it ensures that market participants are treated similarly with respect to their executions against BAM Agency Orders. To do otherwise, to the extent fees are higher pursuant to BAM pricing than under the Exchange's Standard Fee Rates, would incentivize a market participant that wishes to participate in an Auction to nonetheless avoid sending orders to the Exchange that are not targeted towards the Auction and instead send orders to the Exchange's order book generally, knowing that such orders would be considered in the Auction anyway.

In contrast, as proposed, to the extent an unrelated order was already present on the Exchange's order book when a BAM Agency Order is received, such unrelated order, if executed in an Auction, as well as the BAM Agency Order against which it trades will be charged a fee or provided a rebate as if the transaction occurred on the Exchange's order book pursuant to the Exchange's normal order handling methodology and not in BAM. The Exchange similarly believes this is a reasonable and equitable allocation of dues and fees, and is not unreasonably discriminatory, because it will ensure that the participant that had established position on the Exchange's order book first, the unrelated order, is not impacted with respect to applicable fees or rebates despite the later arrival of a BAM Agency Order that commences an Auction.

BAM Break-Up Credits

With respect to the proposal to adopt BAM Break-Up Credits, the Exchange believes this is reasonable because it encourages use of BAM by offering pricing that is equivalent to pricing provided pursuant to other price improvement auctions offered by other options exchanges. The proposal to offer BAM Break-Up Credits is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.[29] Further, the proposed BAM Break-Up Credits are reasonable and equitably allocated because such credits are different based on whether the Auction is for a Penny Pilot Security or a Non-Penny Pilot Security, which is the same differentiation applicable to BAM Responder Orders. Thus, the Exchange has based the amount of the Break-Up Credit, in part, on the amount of the fee it will receive with respect to each BAM Responder Order. Finally, the proposed BAM Break-Up Credits are not unreasonably discriminatory because such credits are equally available to all Members submitting BAM Agency Orders to the Exchange.

Tiers

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 adoption of Customer Volume Tier 6 and Market Maker Volume Tier 8, are each intended to incentivize Members to send additional Customer and Market Maker orders to the Exchange as well as to participate in the Exchange's new BAM process in an effort to qualify for the enhanced rebate or lower fee

29 See MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 FR 52785 (September 4, 2014) (SR-MIAX-2015-45) (notice of filing and immediate effectiveness regarding MIAX PRIME). See also, e.g., NYSE Amex Options Fee Schedule and NASDAQ BX Options Fee Schedule.

made available by the tiers.

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. Further, BAM is fully available to all Members, and the proposed threshold is intentionally low to encourage Members to do the development work necessary to participate in BAM and send BAM Agency Orders.

Designated Give Up

In connection with the adoption of fees applicable to BAM, the Exchange proposes to add new fee code BC to the lead-in sentence of footnote 5 and to append footnote 5 to fee code BC in the Fee Codes and Associated Fees table of the Fee Schedule. In addition, the Exchange proposes to include reference to Routing Firms (i.e., a Member who routed an order to the Exchange with a Designated Give up) in the proposed BAM Break-Up Credit section of footnote 6, to make clear that a Routing Firm too will be provided any applicable BAM Break-Up Credits. The Exchange believes this proposal is a reasonable and equitable allocation of fees and dues and is not unreasonably discriminatory because, as is currently the case pursuant to footnote 5, the proposal simply will make clear that a firm acting as a Routing Firm that routes BAM Agency Orders to the Exchange will be provided applicable rebates, including any BAM Break-Up Credits, based on the Routing Firm's decision to route the order to the Exchange.

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

The Exchange believes the proposed rebate would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rebate represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Rather, the Exchange believes the proposal will enhance competition as it is a competitive proposal that seeks to further the growth of the Exchange by encouraging Members to enter BAM Agency Orders, orders in response to BAM Agency Orders, and orders to the Exchange generally.

The Exchange's proposal to adopt BAM was a competitive response to similar price improvement auctions operated by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges. The Exchange anticipates that BAM will create new opportunities for EDGX to attract new business and compete on equal footing with those options exchanges with auctions. While the proposed fees and rebates are intentionally aggressive in order to attract participation on the Exchange, particularly in BAM, the Exchange does not believe that its proposed pricing significantly departs from pricing in place on other options exchanges that operate price improvement auctions. Accordingly, the Exchange does not believe that the proposal creates an undue burden on inter-market 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. Specifically, the Exchange does not believe that its proposal to establish fees and rebates for BAM will impose any burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply establishing rebates and fees in order to remain competitive in the current environment.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed charges assessed and credits available to member firms in respect of BAM do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result and/or will be unable to attract participants to BAM. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they allow the Exchange to promote and maintain BAM, which has the potential to result in more efficient, price improved executions to the benefit of market participants.

The Exchange believes that the proposed change would increase both inter-market and intra-market competition by incentivizing members to direct their orders, and particularly Customer orders, to the Exchange, which benefits all market participants by providing more trading opportunities, which attracts market makers. To the extent that there is a differentiation between proposed fees assessed and rebates offered to Customers as opposed to other market participants, the Exchange believes that this is appropriate because the fees and rebates should incentivize members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded on the Exchange.

To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed fees and rebates for participation in the BAM Auction are not going to have an impact on intra-market competition based on the total cost for participants to transact as respondents to the Auction as compared to the cost for participants to engage in non-Auction electronic transactions on the Exchange.

As noted above, the Exchange believes that the proposed pricing for the BAM Auction is comparable to that of other exchanges offering similar electronic price improvement mechanisms, and the Exchange believes that, based on general industry experience, market participants understand that the price-improving benefits offered by an Auction justify and offset the transaction costs associated with such Auction. To the extent that there is a difference between non-BAM transactions and BAM transactions, the Exchange does not believe this difference will cause participants to refrain from responding to BAM or submitting orders to the Exchange when a BAM Auction is underway.

In addition, the Exchange does not believe that the proposed transaction fees and credits burden competition by creating a disparity of transaction fees between the BAM Contra Order and the transaction fees a Responder pays would result in certain participants being unable to compete with the contra side order.

The Exchange expects to see robust competition within the BAM Auction. As discussed, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to 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[30] and paragraph (f) of Rule 19b-4 thereunder.[31] 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-BatsEDGX-2017-01 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-BatsEDGX-2017-01. 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

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30 15 U.S.C. 78s(b)(3)(A).

31 17 CFR 240.19b-4(f).

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 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-2017-01, 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.[32]

Eduardo A. Aleman
Assistant Secretary

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[32] 17 CFR 200.30-3(a)(12).