promote the productivity of marine resources, sustain healthy ecosystems, and promote the prosperity and security of the Nation's ocean and coastal communities and their economies for the benefit of present and future generations. The NOC will review the NE Ocean Plan for consistency with the National Ocean Policy, Final Recommendations of the Interagency Ocean Policy Task Force, and the Marine Planning Handbook and make its determination no sooner than 30 days from the publication of this Notice.

Authority: Executive Order 13547, ''Stewardship of the Ocean, Our Coasts and the Great Lakes'' (July 19, 2010).

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79103; File No. SR-BatsBZX–2016–60]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Bats BZX Rule 14.13, Company Listing Fees, and to the Bats BZX Fee Schedule; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

October 14, 2016.

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 September 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 and II 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 and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (1) Temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13 as well as to amend the fee schedule applicable to Members [3] and non-Members of the Exchange pursuant to Exchange Rules 15.1(a) and (c). Changes to the Exchange's fees pursuant to this proposal are effective upon filing.

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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing, and delisting of companies on the Exchange,[4] which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange traded products (''ETPs'') [5] on the Exchange,[6] which it subsequently modified again on June 4, 2014.[7] On October 16, 2014, the Exchange modified Rule 14.13, entitled ''Company Listing Fees'' to eliminate the annual fees for ETPs not participating in the Exchange's Competitive Liquidity Provider Program pursuant to Rule 11.8, Interpretation and Policy .02 (the ''CLP Program'').[8] On May 22, 2015, the Exchange further modified Rule 14.13 to eliminate the $5,000 application fee for ETPs, effectively eliminating any compulsory fees for both new ETP issues and transfer listings in ETPs on the Exchange.[9] On October 1, 2015, the Exchange started offering an incentive payment to ETPs listed on the Exchange based on the consolidated average daily volume (''CADV'') of the ETP (the ''Issuer Incentive Program'') [10] and subsequently made an administrative change to the Issuer Incentive Program that required an issuer to enroll in order to receive payment.[11] The Exchange is now proposing to amend the Issuer Incentive Program such that series of Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts, and Managed Fund Shares (''Funds'') listed on the Exchange will no longer be eligible to receive payments under the Issuer Incentive Program. The Exchange is also proposing that the LMM [12] in a Fund [13] would receive a payment from the Exchange based on the CADV of the Fund, as described below (the ''LMM Partnership Program'').

Specifically, the Exchange is proposing that the Exchange would provide payments to the LMM in a Fund on a quarterly basis as follows: [14]

CADV range	Annualized payment
1,000,000–3,000,000 shares	$3,000
3,000,001–5,000,000 shares	10,000
5,000,001–10,000,000 shares	50,000
10,000,001–20,000,000 shares ..	100,000

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

[2] 17 CFR 240.19b–4.

[3] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' See Exchange Rule 1.5(n).

[4] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] As defined in BZX Rule 11.8(e)(1)(A), the term ''ETP'' means any security listed pursuant to Exchange Rule 14.11.

[6] *See* Securities Exchange Act Release No. 66422 (February 17, 2012), 77 FR 11179 (February 24, 2012) (SR–BATS–2012–010).

[7] *See* Securities Exchange Act Release No. 72377 (June 12, 2014), 79 FR 34822 (June 18, 2014) (SR–BATS–2014–024).

[8] *See* Securities Exchange Act Release No. 73414 (October 23, 2014), 79 FR 64434 (October 29, 2014) (SR–BATS–2014–050).

[9] *See* Securities Exchange Act Release No. 75085 (June 1, 2015), 80 FR 32190 (June 5, 2015) (SR–BATS–2015–39).

[10] *See* Securities Exchange Act Release No. 76113 (October 8, 2015), 80 FR 62142 (October 15, 2015) (SR–BATS–2015–80) (the ''Issuer Incentive Program Filing'').

[11] *See* Securities Exchange Act Release No. 77960 (June 1, 2016), 81 FR 36632 (June 7, 2016) (SR–BatsBZX–2016–20).

[12] As defined in Rule 11.8(e)(1)(B), the term LMM means a Market Maker registered with the Exchange for a particular LMM Security that has committed to maintain Minimum Performance Standards in the LMM Security.

[13] As noted above, the term ''Fund'' includes Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts, and Managed Fund Shares, which are defined in Rule 14.11(b), 14.11(c), 14.11(f), and 14.11(i), respectively, which the Exchange may propose to expand in the future as it adds products which may be listed on the Exchange. Any such expansion would require the Exchange to file a proposal with the Commission under Rule 19b–4 of the Act.

[14] The Exchange notes that the CADV standards and proposed payments applicable to the LMM Partnership Program are identical to the standards and payments currently applicable under the Issuer Incentive Program.

CADV range	Annualized payment
20,000,001–35,000,000 shares ..	250,000
Greater than 35,000,000 shares	400,000

The LMM would only be eligible to receive such payments in quarters during which it is a Qualified LMM[15] for each full month that the Fund was listed on the Exchange.

Because the payments would be provided for each trading day, where a Fund had a CADV of 4,000,000 over the course of a full calendar quarter that it was listed on the Exchange, the LMM for that Fund would receive a payment of $2,500 (.25 * $10,000, the annualized payment for that CADV) at the end of the quarter. Where the same Fund had a CADV of 4,000,000, but was only listed on the Exchange for exactly half of the trading days in the calendar quarter, the LMM for that Fund would receive a payment of $1,250 ((.25 * $10,000) * .5) at the end of the quarter.

The Exchange is proposing to make these changes as a means to equitably allocate the revenues and expenses associated with bringing a successful Fund to market among the issuer, the listing exchange, and the LMM. For example, in new Funds, the cost to a firm of making a market as an LMM, such as holding inventory in the security, is often not fully offset by the revenue provided through enhanced LMM rebates, as further discussed below, that it receives from the Exchange. In such cases, LMMs often take on the role as LMM despite the negative economics based on the hope, without guarantee, that the costs for acting as an LMM will eventually be reduced to a level lower than the gradually decreasing enhanced LMM rebates. Without an LMM taking this risk to make markets in these new Funds, the products would likely be significantly less liquid and would have a greatly reduced likelihood of achieving success.

As highlighted in the Issuer Incentive Program Filing, the primary listing exchange for a Fund earns additional trading fees through the outsized share of intraday trading volume that a primary listed security typically garners for the listing exchange as well as trading fees for orders participating in the opening and closing auctions. Such trading fees generally increase as the CADV for a Fund increases. Similarly, as the CADV increases for a Fund, so does the amount of assets under management (''AUM'') for a Fund tend to increase and AUM is a common measure of a Fund's success and is the basis for certain fees charged by a Fund. As such, both the primary listing exchange and the issuer experience financial benefits as the CADV for a Fund increases. For LMMs, however, as the CADV increases, the enhanced rebates that LMMs receive in securities for which they are an LMM decrease.[16] While this structure provides the potential for an LMM to financially share in the success of a Fund with a high CADV if the costs of making a market in the Fund, the enhanced LMM rebates, and the typical market conditions in the Fund align properly, it does not guarantee it and, further, even if the economics do align properly, the rebate structure fails to account for the LMM's importance in that Fund achieving a high CADV.

Based on the foregoing, the Exchange believes that the current model of compensation for LMMs could be amended to better reflect the role that LMMs play in the success of Funds by having the Exchange direct payments to the LMM. While the Issuer Incentive Program was originally designed to create a more equitable and appropriate allocation based on revenue and expenses associated with listing Funds, upon further examination, the Exchange believes that allowing LMMs to receive payment under the LMM Partnership Program will further enhance the equitability of the distribution of revenues and expenses associated with bringing a successful Fund to market. As such, the Exchange is proposing to adopt the above described tiered payment structure for LMMs in Funds listed on the Exchange under the LMM Partnership Program.

The Exchange is not proposing to make any changes to the Issuer Incentive Program as it currently applies to ETPs that are not Funds.

The Exchange proposes to implement the amendments to Rule 14.13(b)(2)(C) and to its fee schedule effective October 3, 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.[17] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,[18] in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers and its Members and is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment to the fee schedule to provide payment to the LMM for a Fund listed on the Exchange based on the CADV of the Fund is reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and other charges, would promote just and equitable principles of trade, foster cooperation with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system because it would apply equally to all LMMs and create a distribution of fees and other charges that reflects a more equitable distribution among the Exchange, issuer, and LMM of revenue that a Fund listed on the Exchange creates. The Exchange believes that each of the issuer, the exchange, and the LMM play a key role in the ultimate success of a Fund. While no single party can take an action that will determine the ultimate success of a Fund, if just one of the three parties falters at any point in the life of the Fund, it can determine the Fund's failure. As such, the process of bringing a successful Fund to market requires the full commitment of all three of the issuer, the exchange, and the LMM. As described above, trading fees for the primary listing exchange generally increase as the CADV for a Fund increases. Similarly, as the CADV

[15] As defined in the fee schedule, the term ''Qualified LMM'' means an LMM that meets the Minimum Performance Standards, as defined in Rule 11.8(e)(1)(D).

[16] *See* Exchange Fee Schedule, Footnote 14. The Exchange offers standard credits for LMM orders that add liquidity in securities for which they are the LMM as follows: $0.0045 per share for securities with a CADV less than 1,000,000 shares; $0.0040 per share for securities with a CADV from 1,000,000 shares to 5,000,000 shares; $0.0035 per share for securities with a CADV greater than 5,000,000 shares. *See also* NYSE Arca Equities, Inc. Schedule of Fees and Charges for Exchange Services, *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.* Standard credits for LMM orders that add liquidity in securities for which they are an LMM are as follows: $0.0045 per share for securities with a CADV less than 1,000,000 shares; $0.0040 per share for securities with a CADV between 1,000,000 shares and 3,000,000 shares; $0.0033 per share for securities with a CADV greater than 3,000,000 shares.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(4) and (5).

increases for a Fund, so does the amount of AUM for a Fund tend to increase, which is a common measure of a Fund's success and the basis for certain fees charged by a Fund. As such, both the primary listing exchange and the issuer experience financial benefits as the CADV for a Fund increases and are rewarded for their commitment to the Fund. For LMMs, however, as the CADV increases, the enhanced rebates that LMMs receive in securities for which they are an LMM decrease. On its face, this rebate structure makes sense: As the CADV for a Fund increases, the market for that Fund becomes more liquid, spreads become tighter, and the cost associated with making a market in that Fund should generally decrease. Practically, however, the rebate structure fails to account for the LMM's important role in the Fund's success. The LMM Partnership Program, on the other hand, acknowledges the additional revenue brought to the Exchange by virtue of a Fund listing on the Exchange and moves to share that revenue in a more equitable manner based on the integral role that all three parties—the issuer, the exchange, and the LMM—play in the ultimate success of a Fund. Specifically, the proposal is designed to reward the LMM in that Fund for such additional revenue, which the Exchange believes creates a more equitable and appropriate relationship between the Exchange, issuers, and LMMs. As such, the Exchange believes that it is reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to provide payment to LMMs in Funds listed on the Exchange under the LMM Partnership Program.

The Exchange also believes that the proposed amendment to its fee schedule to provide tiered payments to LMMs in Funds listed on the Exchange based on the CADV of a Fund is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because it would create a distribution of fees and other charges applicable to all LMMs that are commensurate with the additional revenue that a Fund listed on the Exchange creates for the Exchange through executions occurring in the auctions and additional shares executed on the Exchange. As described above, where the CADV of a Fund increases, so does the additional trading fee revenue earned by the primary listing exchange. Similarly, as the CADV increases for a Fund, typically so does the amount of AUM for a Fund, which is the basis for certain fees charged by a Fund. As such, both the primary listing exchange and the issuer experience financial benefits as the CADV for a Fund increases. Accordingly, the proposed tiers within the LMM Partnership Program are designed to reward the LMM in a Fund on the basis of the additional revenue potential that the Fund brings to the Exchange and the issuer through increased CADV. Further to this point, the Exchange does not believe that the proposal is unfairly discriminatory because, as described above, the annualized payments associated with the various CADV tiers in the LMM Partnership Program are designed based on the approximate additional revenue that the Exchange will receive from a Fund listed on the Exchange within a particular CADV tier and are identical to those currently provided under the Issuer Incentive Program. The Exchange notes that certain LMMs in Funds in the proposed tiers with higher CADV would receive disproportionately higher rebates than LMMs in Funds in other tiers with lower CADV. The Exchange believes it is equitable and not unfairly discriminatory to provide a disproportionately higher payment to LMMs of Funds in higher tiers because such Funds would likely bring a disproportionately larger amount of revenue to the Exchange from the auctions the Exchange would conduct for such securities and increased trading activity on the Exchange in such securities. The Exchange believes that the additional revenue it will generate from Funds that are eligible for the LMM Partnership Program, including Funds that qualify for the higher tiers, will exceed the amount of such payments to LMMs. To the extent the additional revenue generated by Funds that are eligible to participate in the LMM Partnership Program does not exceed the amount of such payments to LMMs, the Exchange will modify the structure of the LMM Partnership Program such that the program does generate revenue for the Exchange.

The Exchange further believes that it is reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges, would promote just and equitable principles of trade, foster cooperation with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest to provide payment to LMMs in Funds listed on the Exchange through the LMM Partnership Program because receiving payment under the LMM Partnership Program will provide additional incentives for market makers to act as LMM in all BZX-listed Funds, including newly listed Funds. For the vast majority of Funds, the LMM does not change after the Fund is launched. Stated another way, the LMM for a Fund at launch is very likely to be the LMM for the Fund for the foreseeable future. Because of this low turnover in LMMs, the Exchange believes that providing payments to LMMs on the basis of CADV will incentivize more market makers to seek to act as an LMM in more BZX-listed Funds. In particular, the Exchange believes that the implementation of the LMM Partnership Program in conjunction with the low turnover in LMMs for Funds would make it more attractive for a market maker to become an LMM at the launch of a Fund in order to ensure that the market maker does not miss out on the opportunity to receive a payment under the LMM Partnership at some point in the future. This incentive to register as an LMM in new Funds will benefit such Funds by creating greater interest in acting as an LMM and meeting the associated quoting requirements. The same mechanics under the LMM Partnership Program that incentivize market makers to register as LMMs in Funds would also incentivize LMMs in Funds to create the best market conditions for a Fund to increase its CADV and help it attract assets, which likely includes quoting in tighter spreads and at greater depth than they otherwise would in the absence of the LMM Partnership Program. Such tighter spreads and greater depth would result in enhanced market quality in BZX-listed Funds, which would also benefit all market participants. As such, the Exchange believes that aligning the interests and incentives of the LMMs, Fund issuers, and the Exchange will create an ecosystem that benefits all participants.

The Exchange further believes that it is reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges, would promote just and equitable principles of trade, foster cooperation with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest because it is designed to attract additional Fund listings to the Exchange. Based on conversations with numerous market participants, the Exchange believes that the equitable allocation of revenue generated from a Fund listed on the Exchange under the LMM Partnership Program would make

the Exchange a more attractive listing venue from both issuers' and LMMs' perspectives. As such, the Exchange believes that the proposal is reasonable, fair and equitable, and not unfairly discriminatory in that the Exchange believes that it will attract additional Fund listings and LMMs in Funds, which will, in turn, benefit the Exchange and all other BZX-listed Funds.

In addition, the Exchange does not believe that it is unfairly discriminatory to exclude Funds with a CADV of less than 1,000,000 from the LMM Partnership Program because such Funds do not typically generate revenue to the same degree as the higher CADV products. The Exchange notes that Funds with a CADV of less than 1,000,000 are eligible to participate in the ETP CLP Program, which is designed to incentivize market makers to provide liquidity in less actively traded products with the goal of facilitating the growth of such products.[19]

Based on the foregoing, the Exchange believes that the proposed amendment to the fee schedule to provide payment to the LMM for a Fund listed on the Exchange under the LMM Partnership Program is a reasonable, equitable, and non-discriminatory allocation of fees to issuers and LMMs.

The Exchange believes that the proposed amendment to the annual listing fees in Rule 14.13(b)(2)(C) to eliminate the payment to Funds under the Issuer Incentive Program is reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and other charges because it would apply equally to all Funds and eliminating the payment will allow the Exchange to better allocate its resources in order to make BZX a more attractive listing venue for Funds. The payment to Funds under the Issuer Incentive Program has not had the impact that the Exchange sought when it was implemented. As noted above, eliminating the payment to all Funds under the Issuer Incentive Program will allow the Exchange to reallocate its resources in order to make BZX a more attractive listing venue for Funds. The Exchange does not believe that it is unfairly discriminatory to have Funds participate in the LMM Partnership Program and non-Funds remain under the Issuer Incentive Program because the only ETPs currently listed on the Exchange are Funds and the Exchange will continue to evaluate both of the LMM Partnership Program and the Issuer Incentive Program and how they should best apply to Funds and non-Funds moving forward. As such, the Exchange believes that the proposal is reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and other charges.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. With respect to the proposed new pricing, the Exchange does not believe that the changes burden competition, but instead, enhance competition, as they are intended to increase the competitiveness of the Exchange's listings program by eliminating certain payments under the Issuer Incentive Program that have not garnered their intended results and will providing [sic] LMMs in Funds with quarterly payments based on the CADV of the Fund, which the Exchange believes will be directly related to the amount of additional revenue that the Exchange receives from additional transactions in the Fund. As such, the proposal is a competitive proposal that is intended to attract additional Fund listings and LMMs in Funds, which will, in turn, benefit the Exchange and all other BZX-listed Funds.

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. Suspension of SR–BatsBZX–2016–60

Pursuant to Section 19(b)(3)(C) of the Act,[20] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[21] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization 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. The Commission believes it is appropriate in the public interest to temporarily suspend the proposal to solicit comment on and further evaluate the statutory basis for BZX's proposal to adopt the proposed LMM Partnership Program.

In temporarily suspending the proposal, the Commission intends to further assess whether the LMM Partnership Program is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will assess whether the proposed rule change satisfies the requirements of the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[22]

Therefore, the Commission finds that it is appropriate in the public interest,[23] for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–BatsBZX–2016–60

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[24] and 19(b)(2) of the Act[25] to determine whether BZX's proposed rule change should be approved or disapproved. Pursuant to Section 19(b)(2)(B) of the Act,[26] the Commission is providing notice of the grounds for disapproval under consideration. As discussed above, the Exchange proposes to make quarterly payments to LMMs in Funds with CADV of 1,000,000 or higher. These payments would increase

[19] Pursuant to Rule 11.8, Interpretation and Policy .03(n), a security participating in the ETP CLP Program will no longer be eligible to participate once such security sustains CADV of 1,000,000 shares or more for three consecutive months.

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

[21] 15 U.S.C. 78s(b)(1).

[22] *See* 15 U.S.C. 78f(b)(4), (5) and (8).

[23] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

as the CADV of the Fund increases, up to a maximum annual payment of $400,000 to the LMM of a Fund with a CADV of 35,000,000 or more, and they would not be accompanied by enhanced market-quality requirements for the LMM or be determined based on the actual quoting or trading activity of the LMM.

As noted above, the Exchange asserts that the LMM Partnership Program is designed to ''equitably allocate the revenues and expenses associated with bringing a successful Fund to market among the issuer, the listing exchange, and the LMM.'' The Exchange notes that the Exchange's LMM rebate structure ''fails to account for the LMM's important role in [a] Fund's success,'' because ''as the CADV increases, the enhanced rebates that LMMs receive in securities for which they are an LMM decrease.'' [27] The Exchange believes that the LMM Partnership Program will ''provide additional incentives for market makers to act as LMM in all [Exchange]-listed Funds, including newly listed Funds.'' [28]

The Commission believes there are questions as to whether the Exchange has adequately explained why it is consistent with the Act to make substantial additional payments to LMMs in the most-liquid ETFs—where performance incentives would seem least necessary to maintain market quality—without the imposition of any additional performance standards. While the Exchange asserts that the LMM Partnership Program may incent market makers to become LMMs in newly listed Funds, the Commission does not believe it is clear how higher payments to LMMs in the most-liquid ETFs will encourage them to become LMMs in less-liquid ETFs, particularly given that the LMM Partnership Program does not obligate participants to become LMMs in any less-liquid ETFs or impose additional performance standards on them. As a result, the connection between the proposed LMM incentives and the desired LMM behavior appears indirect and tenuous.

The Commission believes it is appropriate to institute proceedings at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate, however, that the Commission has reached any conclusions with respect to the issues involved. The sections of the Act and the rules thereunder which are applicable to the proposed rule change include:

[27] *See* Section II.A.1, *supra.*

[28] *See* Section II.A.2, *supra.*

- Section 6(b)(4) of the Act,[29] which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.''
- Section 6(b)(5) of the Act,[30] which requires that the rules of a national securities exchange be designed to, among other things, ''remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers.''
- Section 6(b)(8) of the Act,[31] which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate'' in furtherance of the Act.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as other relevant concerns. Such comments should be submitted by November 10, 2016. Rebuttal comments should be submitted by November 25, 2016. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[32]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78f(b)(8).

[32] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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.* Please include File Number SR–BatsBZX–2016–60 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–2016–60. 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. 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 publicly available. All submissions should refer to File Number SR–BatsBZX–2016–60 and should be submitted on or before November 10, 2016. Rebuttal comments should be submitted by November 25, 2016.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[33] that File Number SR–BatsBZX–2016–60, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

[33] 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–25350 Filed 10–19–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32318; File No. 812–14594]

First Investors Equity Funds, et al.; Notice of Application

October 14, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: First Investors Equity Funds, First Investors Income Funds, First Investors Life Series Funds and First Investors Tax Exempt Funds (each a ''Trust''), each a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series and Foresters Investment Management Company, Inc. (the ''Adviser''), a New York corporation registered as an investment adviser under the Investment Advisers Act of 1940.

DATES: *Filing Dates:* The application was filed on December 23, 2015 and amended on May 20, 2016 and September 16, 2016.

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 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 November 8, 2016 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: Mary Carty, Esq., Foresters Investment Management Company, Inc., 40 Wall Street, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Kay-Mario Vobis, Senior Counsel, at (202) 551–6728 or Mary Kay Frech, 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 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. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.[1] The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than 7 days.[2]

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund's loans to any one Fund will not exceed 5% of the lending Fund's net assets.[3]

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.[4] Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund

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[34] 17 CFR 200.30–3(a)(57) and (58).

[1] Applicants request that the order apply to the applicants and to any existing or future registered open-end management investment company or series thereof for which the Adviser or any successor thereto or an investment adviser controlling, controlled by, or under common control with the Adviser or any successor thereto serves as investment adviser (each a ''Fund'' and collectively the ''Funds'' and each such investment adviser an ''Adviser''). For purposes of the requested order, ''successor'' is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

[2] Any Fund, however, will be able to call a loan on one business day's notice.

[3] Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

[4] Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.