

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.<sup>3</sup>

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.<sup>4</sup> 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 that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).<sup>5</sup>

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or

transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d-1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79651; File No. SR-NYSEMKT-2016-121]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Modifying the NYSE Amex Options Fee Schedule

December 21, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December

15, 2016, NYSE MKT LLC ("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 self-regulatory organization. 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 proposes to modify the NYSE Amex Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee change effective December 15, 2016. The proposed change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this filing is to amend Section III.C. of the Fee Schedule to exempt Binary Return Derivatives contracts ("ByRDs") from the monthly Rights Fees assessed on Specialists, e-Specialists, Directed Order Market Markers (each a "DOMM"). The Exchange proposes to implement these changes effective December 15, 2016.

The Exchange added rules related to ByRDs in 2007 and re-launched trading in ByRDs in March 2016.<sup>4</sup> To encourage

<sup>3</sup> Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

<sup>4</sup> 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.

<sup>5</sup> Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange adopted ByRDs in 2007 and plans to re-launch trading in ByRDs in March. See Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR-Amex-2004-27) (Order approving listing of Fixed Return Options ("FROs")); see also Securities Exchange Act Release Nos. 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR-NYSEMKT-2014-06) (Order approving name change from FROs

trading in ByRDs, the Exchange currently exempts transactions in ByRDs from all transactions fees and credits.<sup>5</sup> However, ByRDs are subject to monthly Rights Fees.<sup>6</sup> The Exchange proposes to exempt ByRDs from all Rights Fees, which should encourage trading in ByRDs.<sup>7</sup>

The Exchange believes the proposed treatment of ByRDs for purposes of the Fee Schedule would further the Exchange's goal of introducing new products to the marketplace by encouraging trading in these products.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory because the Exchange's treatment of ByRDs would apply equally to all market participants that opted to trade ByRDs. Further, the proposed change is reasonable and does not unfairly discriminate because exempting ByRDs from monthly Rights

to Binary Return Derivatives (ByRDs) and re-launch of these products, with certain modification, and amending Obvious Errors rules to include ByRDs); 77014 (February 2, 2016), 81 FR 6566 (February 8, 2016) (SR-NYSEMKT-2016-16) (immediate effectiveness filing amending amend certain of rules related to ByRDs). ByRDs are European-style option contracts on individual stocks, exchange-traded funds ("ETFs") and Section 107 Securities that have a fixed return in cash based on a set strike price; satisfy specified listing criteria; and may only be exercised at expiration pursuant to the Rules of the Options Clearing Corporation (the "OCC").

<sup>5</sup> See Fee Schedule, Section I.A., n. 5 (exempting ByRDs from all fees and credits for standard options transactions), available here, [https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf).

<sup>6</sup> The Exchange charges a monthly Rights Fee on each issue in the allocation of an e-Specialist, DOMM, and Specialist, which ranges from \$50 to \$2,500 (absent any applicable discount) and is based on the Average National Daily Customer Contracts per issue. See *id.*, Fee Schedule, Section III.C. (e-Specialist, DOMM and Specialist Monthly Rights Fees).

<sup>7</sup> See proposed Fee Schedule, Section III.C. at n. 1 (stating that ByRDs are exempt from the Rights Fees). The Exchange proposes to delete as obsolete language from current note 1 to Section III.C., which provides that options listed before June 1, 2012 would be "grandfathered" for purposes of certain Rights Fee. See *id.* The Exchange believes this proposed change adds clarity and transparency to the Fee Schedule, as any options series listed before 2012 would have expired by now.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

Fees would further the Exchange's goal of introducing new products to the marketplace by encouraging trading in these products. To the extent that the proposed change incentivizes any market participants to direct their order flow to the Exchange, all market participants would benefit from increased liquidity and trading opportunities on the Exchange.

The Exchange believes the proposed change to remove obsolete language from the Fee Schedule adds clarity and transparency to the Fee Schedule, which makes it easier for market participants to comprehend.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>10</sup> the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change is pro-competitive as it would further the Exchange's goal of introducing new products to the marketplace and encouraging trading in these products, which would in turn, benefit market participants. To the extent that this purpose is achieved, all of 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. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

<sup>10</sup> 15 U.S.C. 78f(b)(8).

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>13</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-121 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-NYSEMKT-2016-121. 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2016-121 and should be submitted on or before January 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79636; File No. SR-BatsBZX-2016-87]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Market Data Section of Its Fee Schedule To Adopt Fees for BZX Summary Depth and Amend Fees for BZX Depth

December 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 14, 2016, Bats BZX Exchange, Inc. ("BZX" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)

thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend the Market Data section of its fee schedule to: (i) Adopt fees for a new market data product called BZX Summary Depth; and (ii) amend the fees for BZX Depth.

The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to: (i) Adopt fees for a new market data product called BZX Summary Depth; and (ii) amend the fees for BZX Depth.

###### BZX Summary Depth

BZX Summary Depth is a data feed that will provide aggregated two-sided quotations for all displayed orders entered into the System<sup>5</sup> for up to five (5) price levels for securities traded on the Exchange and for which the Exchange reports quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan.<sup>6</sup> BZX

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users Are consolidated for ranking, execution and, when applicable, routing away." See Exchange Rule 1.5(aa).

<sup>6</sup> See Exchange Rule 11.22(m).

Summary Depth will also contain the individual last sale information, Market Status, Trading Status, and Trade Break messages. The individual last sale information will include the price, size, and time of execution. The last sale message will also include the cumulative number of shares executed on the Exchange for that trading day. The Exchange intends to begin to offer BZX Summary Depth on January 3, 2017.<sup>7</sup>

The Exchange now proposes to amend its fee schedule to incorporate fees for distribution of BZX Summary Depth to subscribers.<sup>8</sup> The proposed fees include the following, each of which are described in detail below: (i) Distribution Fees for both Internal and External Distributors;<sup>9</sup> (ii) Usage Fees for both Professional<sup>10</sup> and Non-Professional<sup>11</sup> Users; (iii) an Enterprise Fee; and (iv) a Digital Media Enterprise Fee.

*Distribution Fees.* As proposed, each Internal Distributor that receives BZX

<sup>7</sup> See *Reminder: Bats Global Markets to Introduce Bats Summary Depth Feeds on January 3, 2017*, [http://cdn.batstrading.com/resources/release\\_notes/2017/Reminder-Bats-Global-Markets-to-Introduce-Bats-Summary-Depth-Feeds-on-Jan-3-2017.pdf](http://cdn.batstrading.com/resources/release_notes/2017/Reminder-Bats-Global-Markets-to-Introduce-Bats-Summary-Depth-Feeds-on-Jan-3-2017.pdf).

<sup>8</sup> The Exchange notes that its affiliated exchanges, Bats EDGX Exchange, Inc. ("EDGX"), Bats EDGA Exchange, Inc. ("EDGA") and Bats BYX Exchange, Inc. ("BYX", together with the Exchange, EDGX and EDGA, the "Bats Exchanges"), also intend to file proposed rule changes with Commission to adopt similar fees for their respective Summary Depth market data product.

<sup>9</sup> A "Distributor" is defined as "any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party." See the Exchange's fee schedule available at [http://www.bats.com/us/equities/membership/fee\\_schedule/bzx/](http://www.bats.com/us/equities/membership/fee_schedule/bzx/). An "Internal Distributor" is defined as "a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity." *Id.* An "External Distributor" is defined as "a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity." *Id.*

<sup>10</sup> A "Professional User" is defined as "any User other than a Non-Professional User." See the Exchange's fee schedule available at [http://www.bats.com/us/equities/membership/fee\\_schedule/bzx/](http://www.bats.com/us/equities/membership/fee_schedule/bzx/).

<sup>11</sup> A "Non-Professional User" is defined as "a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt." *Id.*

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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