

2017-064 and should be submitted on or before November 8, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81866; File No. SR-BatsBZX-2017-65]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on the Exchange's Equity Options Platform

October 12, 2017.

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 October 2, 2017, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at www.bats.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform ("BZX Options") to adopt a new Firm,⁶ Broker Dealer⁷ and Joint Back Office⁸ Non-Penny Pilot⁹ Add Volume Tier under footnote 8.

The Exchange currently offers three Firm, Broker Dealer and Joint Back Office Non-Penny Add Volume Tiers under footnote 8, which provide an enhanced rebate ranging from \$0.33 to \$0.82 per contract for qualifying orders that add liquidity in Non Penny Pilot Securities and yield fee code NF.¹⁰ The Exchange now proposes to add a new Tier 3 and to re-number current Tier 3 as Tier 4.

Currently under Tier 3, to be re-numbered as Tier 4, a Member's orders that yield fee code NF receive an enhanced rebate of \$0.82 per contract

⁶ "Firm" applies to any transaction identified by a Member for clearing in the Firm range at the OCC, excluding any Joint Back Office transaction. See the Exchange's fee schedule available at http://www.bats.com/us/options/membership/fee_schedule/bzx/.

⁷ "Broker Dealer" applies to any order for the account of a broker dealer, including a foreign broker dealer, that clears in the Customer range at the Options Clearing Corporation ("OCC"). *Id.*

⁸ "Joint Back Office" applies to any transaction identified by a Member for clearing in the Firm range at the OCC that is identified with an origin code as Joint Back Office. A Joint Back Office participant is a Member that maintains a Joint Back Office arrangement with a clearing broker-dealer. *Id.*

⁹ "Penny Pilot Securities" are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01. *Id.* "Non-Penny Pilot" refers to all other issues.

¹⁰ Fee code NF is appended to Firm, Broker Dealer and Joint Back Office orders in Non-Penny Pilot Securities that add liquidity. Orders that yield fee code NF are provided a standard rebate of \$0.30 per contract. *Id.*

where the Member has an: (i) ADV¹¹ greater than or equal to 2.30% of average OCV; ¹² (ii) ADAV¹³ in Away Market Maker,¹⁴ Firm, Broker Dealer and Joint Back Office orders greater than or equal to 1.65% of average OCV; and (iii) ADAV in Non-Customer¹⁵ Non-Penny¹⁶ orders greater than or equal to 0.20% of average OCV. The Exchange proposes to adopt new Tier 3, which would be similar to re-numbered Tier 4 but would have lower criteria and a lower rebate. Specifically, pursuant to new Tier 3 a Member's orders that yield fee code NF would receive an enhanced rebate of \$0.53 per contract where the Member has an: (i) ADV greater than or equal to 2.30% of average OCV; (ii) ADAV in Away Market Maker, Firm, Broker Dealer and Joint Back Office orders greater than or equal to 1.45% of average OCV; and (iii) ADAV in Non-Customer Non-Penny orders greater than or equal to 0.20% of average OCV. Thus, the second criterion is lower, requiring an ADAV in applicable orders greater than or equal to 1.45% of average OCV rather than 1.65% of average OCV. Otherwise the criteria of Tier 3 are the same as Tier 4. The Exchange also notes that the proposed enhanced rebate of \$0.53 is also the same as the enhanced rebate provided pursuant to Tier 2.

Implementation Date

The Exchange proposes to implement the above changes to its fee schedule on October 2, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent

¹¹ "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day. *Id.*

¹² "OCV" means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close. *Id.*

¹³ "ADAV" means average daily added volume calculated as the number of contracts added per day. See the Exchange's fee schedule available at http://www.bats.com/us/options/membership/fee_schedule/bzx/.

¹⁴ "Away Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is not registered with the Exchange as a Market Maker, but is registered as a market maker on another options exchange. *Id.*

¹⁵ "Non-Customer" applies to any transaction identified by a Member for clearing which is not in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a "Professional" as defined in Exchange Rule 16.1. *Id.*

¹⁶ "Penny Pilot Securities" are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01. *Id.* Non-Penny securities are all other securities.

with the objectives of Section 6 of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4),¹⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed modification to the Exchange's tiered pricing structure is reasonable, fair and equitable, and non-discriminatory. The Exchange operates in a highly competitive market in which market participants may readily send order flow to many competing venues if they deem fees at the Exchange to be excessive or incentives provided to be insufficient. The proposed structure remains intended to attract order flow to the Exchange by offering market participants a competitive pricing structure. The Exchange believes it is reasonable to offer and incrementally modify incentives intended to help to contribute to the growth of the Exchange.

Volume-based pricing structures such as that maintained by the Exchange have been widely adopted by exchanges, including the Exchange, 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: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provisions and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. In particular, the proposed change to footnote 8 is a minor change intended to provide an incentive similar to an existing incentive but that is more attainable. The proposed incentive, in turn, is intended to incentivize Members to send increased order flow to the Exchange in an effort to qualify for the enhanced rebates made available by the tier. This increased order flow, in turn, contributes to the growth of the Exchange. The Exchange also believes the rebate associated with the tier is reasonable as it reflects the difficulty in achieving the tier and is the same as that provided under a different volume tier (Tier 2). These incentives remain reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, including liquidity provision and the introduction of higher volumes of orders into the price and volume discovery processes. The proposed change to the tiered pricing structure is not unfairly

discriminatory because it will apply equally to all Members.

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

The Exchange believes the proposed amendment to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors.

Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that the proposed change to the Exchange's tiered pricing structure burdens competition, but instead, enhances competition, as it is intended to increase the competitiveness of 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 Act¹⁹ and paragraph (f) of Rule 19b-4 thereunder.²⁰ 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 email to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2017-65 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-2017-65. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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-BatsBZX-2017-65, and should be submitted on or before November 8, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

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¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(4).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

²¹ 17 CFR 200.30-3(a)(12).