

and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Fund to issue multiple classes of Shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its Shares and provide investors with a broader choice of shareholder options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that the Fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

#### *Asset-Based Service and/or Distribution Fees*

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to permit the Fund to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution

of its shares through asset-based service and/or distribution fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the Funds' imposition of asset-based service and/or distribution fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

#### **Applicants' Condition**

The Fund agrees that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3, 22d-1, and where applicable, 11a-3 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with FINRA Rule 2341, as amended from time to time, as if that rule applied to all closed-end management investment companies.

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

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

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-80912; File No. SR-BatsBZX-2017-42]**

### **Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Bats BZX Exchange, Inc.**

June 13, 2017.

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 June 1, 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 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 fee schedule applicable to Members<sup>5</sup> 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](http://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 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 applicable to its equities trading platform ("BZX Equities") to: (i) Modify the rates associated with fee codes AA, BJ and RA; (ii) adopt new fee code IX; and (iii) increase the condition necessary to qualify for the enhanced rebate provided by the Step-Up tier under footnote 2. The Exchange notes that Bats EDGA Exchange, Inc. ("EDGA") is implementing certain pricing changes effective June 1, 2017, including modification of various fees and rebates to add and remove liquidity with a displayed or IOC order to a flat

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

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

<sup>5</sup> 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).

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

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

fee of \$0.0003 per share to add or remove liquidity with a displayed or IOC order.<sup>6</sup> The proposed changes to AA, BJ, and RA are proposed in light of these changes.

#### Fee Code AA

The Exchange proposes to modify the rate associated with orders yielding fee code AA, which results from an order routed to EDGA using ALLB routing strategy,<sup>7</sup> from a \$0.0002 per share rebate to a fee of \$0.0003 per share for securities priced at or above \$1.00. The Exchange does not propose to modify the rate for orders yielding fee code AA for securities priced below \$1.00, which are currently not charged a fee nor provided a rebate.

#### Fee Code BJ

The Exchange proposes to modify the rate associated with orders yielding fee code BJ, which result from an order routed to EDGA using TRIM or TRIM2 routing strategies,<sup>8</sup> from a rebate of \$0.0002 per share to a fee of \$0.0003 per share for all securities (*i.e.*, those priced at or above \$1.00 and those priced below \$1.00).

#### Fee Code RA

The Exchange proposes to decrease the fee associated with orders yielding fee code RA, which results from an order routed to EDGA which adds liquidity, from a fee of \$0.0005 per share to a fee of \$0.0003 per share for securities priced at or above \$1.00. The Exchange does not propose to modify the rate for orders yielding fee code RA for securities priced below \$1.00, which are currently not charged a fee nor provided a rebate.

#### Fee Code IX

The Exchange proposes to adopt new fee code IX, which would be appended to all orders that are routed to the Investors Exchange, Inc. ("IEX") using the using TRIM or TRIM2 routing strategies. Orders yielding fee code IX will be charged a fee of \$0.0010 per

share for all securities (*i.e.*, those priced at or above \$1.00 and those priced below \$1.00). The Exchange notes that it has not previously included IEX on the routing tables for TRIM and TRIM2 but plans to do so effective June 1, 2017, and thus, that the proposed change is necessary to account for executions at IEX through such routing strategies.

#### Single MPID Investor Tier

The Exchange currently offers two Single MPID Investor Tiers under footnote 4, which provides an enhanced rebate of \$0.0031 or \$0.0027 per share for qualifying orders which yield fee codes B,<sup>9</sup> V,<sup>10</sup> or Y.<sup>11</sup> The distinction between the tiers under footnote 4 and other tiers offered by the Exchange, is that the volume measured to determine whether a Member qualifies is performed on an MPID by MPID basis. The Exchange proposes to modify the criteria necessary to achieve the Step-Up Add Tier as described below.

Currently, under the Step-Up Add Tier a Member may receive an enhanced rebate of \$0.0027 per share where the MPID has a Step-Up ADAV<sup>12</sup> from November 2016, greater than or equal to 500,000 shares. As amended a Member may receive an enhanced rebate of \$0.0027 per share where the MPID has a Step-Up ADAV from November 2016, greater than or equal to 750,000 shares.

#### Implementation Date

The Exchange proposes to implement the above changes to its fee schedule on June 1, 2017.

#### 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>14</sup> 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 also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing

venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Furthermore, the Exchange notes that routing through the Exchange's affiliate, Bats Trading, is voluntary.

#### Modification of the MPID Investor Step-Up Add Tier

The Exchange believes that the proposed modification to the 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 such as that proposed herein 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.

The proposed modification of the Single MPID Step-Up Add Tier reinforces the purpose of the Single MPID Investor Tier by incentivizing Members to send additionally higher level of orders to the Exchange than was previously required. By applying the tier on a single MPID rather than across a Member's entire trading activity, the Exchange is also allowing more Members to potentially receive the enhanced rebates for their trading activity related to liquidity provision. Thus, the Exchange believes that the proposed modification to the tiered pricing structure under footnote 4 is a reasonable, equitable, and not an unfairly discriminatory allocation of fees and rebates because it will provide Members with an incentive to reach a higher thresholds on the Exchange by contributing a meaningful amount of order flow. The proposed modification is non-discriminatory because it applies and is available to all Members.

<sup>6</sup> See Press Release, Bats Announces Fee Overhaul of EDGA Equities Exchange (May 30, 2017), available at <http://ir.cboe.com/press-releases/2017/05-30-2017.aspx>.

<sup>7</sup> ALLB is a routing option under which the order checks the System for available shares and is then sent to the Bats BYX Exchange, Inc. ("BYX"), EDGA, and Bats EDGX Exchange, Inc. ("EDGX" collectively with the Exchange, BYX, and EDGA, the "BGM Affiliated Exchanges"). See the Exchange's routing strategies available at <http://cdn.bats-trading.com/resources/features/bats-exchange-routing-strategies.pdf>. See also Exchange Rule 11.13(b)(3).

<sup>8</sup> The TRIM and TRIM2 routing strategies focus on seeking execution of orders while minimizing execution costs by routing only to certain low cost execution venues on the Exchange's System routing table. *Id.*

<sup>9</sup> Fee code B is appended to displayed orders which add liquidity to Tape B and is provided a rebate of \$0.0025 per share.

<sup>10</sup> Fee code V is appended to displayed orders which add liquidity to Tape A and is provided a rebate of \$0.0020 per share.

<sup>11</sup> Fee code Y is appended to displayed orders which add liquidity to Tape C and is provided a rebate of \$0.0020 per share.

<sup>12</sup> "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV. See the Exchange's fee schedule available at <http://www.bats.com/us/equities/membership/fee-schedule/bzx/>.

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

#### Fee Codes AA, BJ, and RA

As noted above, EDGA is implementing certain pricing changes effective June 1, 2017, including modification of various fees and rebates to and remove liquidity with a displayed or IOC order to a flat fee of \$0.0003 per share to add or remove liquidity with a displayed or IOC order.<sup>15</sup> The changes to fee codes AA, BJ, and RA are proposed in light of these changes and reflect a pass-through of the pricing provided by EDGA. As the pricing in securities priced at or above \$1.00 reflects the same pricing a Member would receive for participation on EDGA directly and the pricing in securities priced below \$1.00 is based on the current pricing model applied by the Exchange, the Exchange believes the proposed fees are reasonable and equitably allocated. The Exchange further believes the proposed fees are non-discriminatory because they apply uniformly to all Members.

#### Fee Code IX

As of August 19, 2016, IEX began charging a fee of \$0.0009 per share for orders which remove liquidity against non-displayed orders and no fee for orders that remove liquidity against displayed order.<sup>16</sup> Because the Exchange is not be able to control whether the order it routes to IEX executes against displayed or non-displayed liquidity, it therefore, believes it is equitable and reasonable to charge a fee for orders that yield fee code IX based on IEX's rates for removing non-displayed interest. The Exchange further believes that its proposal to charge a fee of \$0.0010 per share is equitable and reasonable because it accounts for the prices charged by IEX plus the additional operation expenses that would be incurred by the Exchange in routing orders to IEX. Furthermore, the Exchange notes that routing through Bats Trading is voluntary and Members may utilize other avenues to route orders to IEX, such as connecting to IEX directly. Lastly, the Exchange also believes that the proposed fee code is non-discriminatory because it applies uniformly to all Members.

#### *B. Self-Regulatory Organization's Statement on Burden on 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. The Exchange does not believe that any of the proposed changes to the Exchange's routing pricing burden competition, as they are based on the pricing on other venues. Similarly, the Exchange does not believe that the proposed change to the Exchange's tiered pricing structure burden competition, but instead, that they enhance competition as they are intended to increase the competitiveness of BZX by modifying pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all Members uniformly.

#### *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<sup>17</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>18</sup> 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](mailto:rule-comments@sec.gov). Please include File No. SR-BatsBZX-2017-42 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 No. SR-BatsBZX-2017-42. 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 No. SR-BatsBZX-2017-42, and should be submitted on or before July 10, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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

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<sup>15</sup> See *supra*, note 6.

<sup>16</sup> See IEX fee schedule available at <https://iextrading.com/trading/#fee-schedule> (effective August 19, 2016). See also IEX Trading Alert #2016-036, Investors Exchange Fee Schedule Effective August 19, 2016, available at <https://iextrading.com/trading/alerts/2016/036/>.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f).

<sup>19</sup> 17 CFR 200.30-3(a)(12).