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## Background

1. The Prior Order granted the Applicants relief from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements, to permit certain series of AST to enter into and materially amend subadvisory agreements without shareholder approval. Applicants have requested that the Prior Order be rescinded because they are not presently relying on the Prior Order and will not do so in the future.

2. Section 38(a) of the Act states, in relevant part, that the Commission shall have authority to rescind an order as is necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act. The Commission intends to rescind the Prior Order pursuant to section 38(a) of the Act.

By the Commission.

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78792; File No. SR-BatsBZX-2016-56]

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

September 8, 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 August 31, 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, 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 to amend its fees and rebates 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.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 its fee schedule to: (i) Adopt a new tier called the Take Volume Tier under footnote 3; and (ii) add definitions of Options Customer Remove TCV and Step-Up Remove TCV, as described below, to the Definitions section of its fee schedule.

Currently, with respect to the Exchange's equities trading platform ("BZX Equities") the Exchange determines rebates and fees that it will apply to Members using the Exchange's tiered pricing structure. Under the Exchange's pricing structure, a Member will receive a standard rebate of either \$0.0020 (for Tapes A and C) or \$0.0025

(for Tape B) on orders that add liquidity and will be assessed a standard fee of \$0.0030 per share executed on orders that remove liquidity. Reduced fees and increased rebates are available depending on the volume tier for which such Member qualifies. Included amongst the volume tiers offered by the Exchange are various tiers for purposes of BZX Equities pricing, which require participation on the Exchange's options platform ("BZX Options") and are generally referred to as "Cross-Asset Tiers". For instance, pursuant to footnote 3 of the BZX Equities Fee Schedule, the Exchange offers three Cross-Asset Step-Up Tiers, which provide enhanced rebates ranging from of \$0.0027 to \$0.0029 per share on displayed orders that add liquidity in Tape A, B and C securities submitted by Members with qualifying Step-Up Add TCV<sup>6</sup> on BZX Options.

In connection with the proposed tier described below, the Exchange proposes to adopt definitions for Options Customer Remove TCV and Step-Up Remove TCV. The proposed definition for Options Customer Remove TCV is based on and similar to the definition of Options Customer Add TCV set forth on the Exchange's Fee Schedule. As proposed, "Options Customer Remove TCV" for purposes of equities pricing would mean ADV<sup>7</sup> resulting from Customer<sup>8</sup> orders that remove liquidity as a percentage of TCV,<sup>9</sup> using the definitions of ADV, Customer and TCV as provided under the Exchange's fee schedule for BZX Options. The proposed definition for Step-Up Remove TCV is based on and similar to the definition of Step-Up Add TCV set forth on the Exchange's Fee Schedule. As proposed, "Step-Up Remove TCV" for purposes of equities pricing would mean ADV resulting from orders that remove liquidity as a percentage of TCV in the relevant baseline month subtracted from current ADV resulting from orders that remove liquidity as a percentage of TCV.

The Exchange proposes to adopt a new tier entitled "Take Volume Tier" under footnote 3, applicable to orders yielding fee codes BB, N and W. Under the Take Volume Tier, the Exchange is proposing to provide a reduced fee of \$0.00295 per share to Members with: (1) Options Customer Remove TCV equal to or greater than 0.30%; and (2) Step-Up Remove TCV from July 2016 equal to or greater than 0.05%. As is the case with any other fee on the Fee Schedule, to

<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> 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).

<sup>6</sup> As defined in the Exchange's Fee Schedule.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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

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

the extent that a Member qualifies for a lower fee than those provided under the proposed Take Volume Tier, the lower fee shall apply.

#### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule as of September 1, 2016.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</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. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed tier is equitable and non-discriminatory in it would apply uniformly to all Members. The Exchange believes the rates remain competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

Volume-based rebates and fees such as the proposed Take Volume Tier have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange believes that the proposal to add a Take Volume Tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with an additional incentive to reach certain thresholds on both BZX Equities and BZX Options. The increased liquidity from this proposal also benefits all investors by deepening the BZX Equities and BZX Options liquidity pools, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market

transparency and improving investor protection. Such pricing programs thereby reward a Member's growth pattern on the Exchange and such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. To the extent a Member participates on the Exchange but not on BZX Options, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of BZX Options. As noted above, such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on BZX Options or not. The proposed pricing program is also fair and equitable in that membership in BZX Options is available to all market participants which would provide them with access to the benefits on BZX Options provided by the proposed changes, as described above, even where a member of BZX Options is not necessarily eligible for the proposed increased rebates on the Exchange. Further, the proposed changes will result in Members receiving either the same or a lower fee than they would currently receive.

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

The Exchange does not believe its proposed amendment to its Fee Schedule would 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 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 proposed changes are generally intended to offer an incentive resulting in reduced fees for removing liquidity on the Exchange, which is

intended to draw additional participants to the Exchange. The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all Members uniformly.

The Exchange does not believe that the proposed new Take Volume Tier would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited 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>12</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>13</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 Number SR-BatsBZX-2016-56 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-2016-56. This file number should be included on the

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

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 such filing will also 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-2016-56 and should be submitted on or before October 5, 2016.

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

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78787; File No. SR-BatsBZX-2016-57]

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

September 8, 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 August 31, 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, 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.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 modify its fee schedule applicable to the Exchange's options platform ("BZX Options") to: (i) Adopt a new Quoting Incentive Program Tier under footnote 5; and (ii) adopt a new NBBO Setter Tier under footnote 4.

<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> 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).

#### Quoting Incentive Program ("QIP") Tier 4

The Exchange currently offers three QIP tiers under footnote 5, which provide an additional rebate per contract for orders that add liquidity to the BZX Options Book<sup>6</sup> in options classes in which a Member is a Market Maker<sup>7</sup> registered on BZX Options pursuant to Rule 22.2. The Market Maker must be registered with BZX Options in an average of 20% or more of the associated options series in a class in order to qualify for QIP rebates for that class. The QIP tiers provide an enhanced rebate ranging from \$0.02 to \$0.05 per contract to qualifying Market Maker orders that yield fee code PM or NM. The Exchange now proposes to add QIP Tier 4 under which a Market Maker may receive an additional rebate of \$0.03 per contract, where the Member has an ADAV<sup>8</sup> in Market Maker orders equal to or greater than 0.40% of average TCV.<sup>9</sup>

#### NBBO Setter Tier

The Exchange currently offers four NBBO Setter tiers under footnote 4, which provide an additional rebate per contract for non-Customer orders that add liquidity and establish a new National Best Bid or Offer ("NBBO"). The NBBO Setter tiers provide an enhanced rebate ranging from \$0.02 to \$0.05 per contract to qualifying non-Customer orders that yield fee code PA, PF, PM, PN, NA, NF, NM or NN. The Exchange now proposes to add a new NBBO Setter Tier 4 under which a non-Customer order may receive an additional rebate of \$0.03 per contract where the Member has an ADAV in Market Maker orders equal to or greater than 0.40% of average TCV. As a result, the current NBBO Setter Tier 4 will be renamed to NBBO Setter Tier 5.

#### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule as of September 1, 2016.

<sup>6</sup> See Exchange Rule 16.1(a)(9).

<sup>7</sup> "Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37).

<sup>8</sup> "ADAV" means average daily added volume calculated as the number of contracts added.

<sup>9</sup> "TCV" means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan 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.

<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.