

collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on

respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Request for Medicare Payment; OMB 3220-0131 Under Section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed by Palmetto GBA, the Medicare carrier for railroad retirement beneficiaries, to pay claims for payments under Part B of the Medicare

program. Authority for collecting the information is prescribed in 42 CFR 424.32.

The RRB currently utilizes Forms G-740S, Patient's Request for Medicare Payment, along with Centers for Medicare & Medicaid Services Form CMS-1500, to secure the information necessary to pay Part B Medicare Claims. One response is completed for each claim. Completion is required to obtain a benefit. The RRB proposes no changes to Form G-740S.

#### ESTIMATE OF ANNUAL RESPONDENT BURDEN

| Form number  | Annual responses | Time (minutes) | Burden (hours) |
|--------------|------------------|----------------|----------------|
| G-740S ..... | 100              | 15             | 25             |

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751-4981 or [Dana.Hickman@RRB.GOV](mailto:Dana.Hickman@RRB.GOV). Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or emailed to [Charles.Mierzwa@RRB.GOV](mailto:Charles.Mierzwa@RRB.GOV). Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**  
Chief of Information Resources Management.  
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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76453; File No. SR-EDGX-2015-56]

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

November 17, 2015.

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 November 9, 2015, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 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 EDGX 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 adopt a fee schedule which would be applicable to the Exchange's options platform ("EDGX Options"). Specifically, the fee schedule would establish select fees applicable to Members trading options on and using services provided by EDGX Options. The Exchange proposes to implement these amendments to its fee schedule immediately.<sup>6</sup>

##### Definitions

The Exchange proposes to include general defined terms in its fee schedule. The proposed definitions are designed to provide greater transparency with regard to how the Exchange assesses fees and are based on and nearly identical to those currently provided for in the fee schedule for the equity options platform operated by BATS Exchange, Inc. ("BZX Options").<sup>7</sup> Each of these definitions are as follows:

<sup>6</sup> The Exchange initially filed the proposed fees on October 30, 2015 (SR-EDGX-2015-54). On November 9, 2015, the Exchange withdrew that filing and submitted this filing.

<sup>7</sup> The Exchange notes that although there is no substantive difference between the definitions, instead of "Away Market Maker", which is the proposed term for EDGX Options, BZX Options uses the term "Non-BATS Market Maker."

<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).

<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).

- *Per Contract*. All references to “per contract” within the fee schedule are to mean “per contract executed”.

- *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”).

- *Customer*. Applies to any transaction identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a “Professional” as defined in Exchange Rule 16.1.

- *Firm*. Applies to any transaction identified by a Member for clearing in the Firm range at the OCC, excluding any Joint Back Office transaction.

- *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.

- *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).

- *Non-Customer*. Applies to any transaction that is not a Customer order.

- *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.

- *Professional*. Applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

- *Penny Pilot Securities*. Are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.<sup>8</sup>

#### Standard Transaction Fees

The Exchange proposes to implement a fee structure under which standard rates are applied, the amount of which depend on whether the order is for a Customer, Non-Customer, or Market Maker as well as the capacity of the order with which such order trades. The standard rates and applicable fee codes described below would apply unless a Member's transaction is assigned a fee

code other than a standard fee code. A fee code other than a standard fee code would only be applied to a Member's transaction that is routed to and executed on another options exchange or where it is to participate in the EDGX Options opening process under Exchange Rule 21.7. Like on BZX Options, an order that participates in the EDGX Options opening process would yield fee code OO and would not be charged a fee nor receive any rebate.<sup>9</sup>

Initially, the Exchange does not propose to implement a tiered pricing structure under which it would provide enhanced rebates or reduced fees based on the Member's monthly trading activity. Nor does the Exchange propose to implement “maker-taker” pricing (i.e., providing a rebate to the side of the transaction that added liquidity and a fee to the side of the transaction that removed liquidity).

*Customer vs. Customer*. Neither side of a transaction will be charged a fee where both sides trade in a Customer capacity. Such Customer orders would yield either fee code PA or NA where they add liquidity and PR or NR where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

*Customer vs. Non-Customer*. An order that trades in a Customer capacity will receive a rebate of \$0.21 per contract where it executes against a contra-side order that trades in a Non-Customer capacity. Such Customer orders would yield either fee code PY or NY where they add liquidity and PC or NC where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

*Market Maker vs. Customer*. An order that trades in a Market Maker capacity will be charged a fee of \$0.21 per contract where it executes against a contra-side order that trades in a Customer capacity. Such Market Maker orders would yield either fee code PM or NM where they add liquidity and PP or NP where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

*Non-Customer (other than Market Maker) vs. Customer*. For Penny Pilot Securities, an order that trades in a Non-Customer capacity, other than a Market Maker, will be charged a fee of \$0.46 per contract where it executes against a contra-side order that trades in a Customer capacity. Such Non-Customer orders in Penny Pilot Securities would yield fee code PO where they add liquidity and PQ where they remove

liquidity. Such Non-Customer orders in Non-Penny Pilot Securities would be charged a fee of \$0.86 per contract and yield fee code NO where they add liquidity and NQ where they remove liquidity.

*Non-Customer vs. Non-Customer*. Neither side of a transaction will be charged a fee where both sides trade in a Non-Customer capacity. Such Non-Customer orders would yield either fee code PF or NF where they add liquidity and PN or NN where they remove liquidity, depending on whether the order is in a Penny Pilot Security or not.

#### Routing Fees

The Exchange proposes to adopt rates for routed orders that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, “Routing Costs”). The Exchange intends to monitor the fees charged as compared to the costs of its routing services and adjust its routing fees to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. The proposed rates are based on the rates charged by the Exchange's affiliate, BZX Options, for routing services.

#### Marketing Fees

The Exchange will assess a marketing fee to all Market Makers for contracts they execute in their assigned classes when the contra-party to the execution is a Customer. The marketing fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. Each Primary Market Maker (“PMM”) <sup>10</sup> and Directed Market Maker (“DMM”) <sup>11</sup> will have a marketing fee pool into which the Exchange will deposit the applicable per-contract marketing fee. For orders directed to DMMs, the applicable marketing fees are allocated to the DMM pool. For non-directed orders, the applicable marketing fees are allocated to the PMM pool. All Market Makers that participated in such transaction will pay the applicable marketing fees to the Exchange, which will allocate such funds to the Market Maker that controls the distribution of the marketing fee pool. Each month the Market Maker will provide instruction to the Exchange

<sup>8</sup> Exchange Rule 21.5, Interpretation and Policy .01 states that the Exchange will operate a pilot program set to expire on June 30, 2016 to permit options classes to be quoted and traded in increments as low as \$.01. A list of option classes included in the pilot program is available on the Exchange's Web site.

<sup>9</sup> See the BZX Options fee schedule available at [http://www.batsoptions.com/support/fee\\_schedule/bzx/](http://www.batsoptions.com/support/fee_schedule/bzx/).

<sup>10</sup> See Exchange Rule 21.8(g).

<sup>11</sup> See Exchange Rule 21.8(f).

describing how the Exchange is to distribute the marketing fees in the pool to the order flow provider, who submit as agent, Customer orders to the Exchange.

Undisbursed marketing fees will be reimbursed to the Market Makers that contributed to the pool based upon their pro-rata portion of the entire amount of marketing fee collected. In order to provide PMMs and DMMs flexibility in the timing of their disbursements to Electronic Exchange Members, PMMs and DMMs may choose to disburse the Market Fees collected in one month over a three month period. Reimbursement of undisbursed Marketing Fees will take this into consideration.

The amount of the Marketing Fee would depend upon whether the affected option class is a Penny Pilot Security. A Marketing Fee of \$0.25 per contract will be assessed to Market Makers for transactions in Penny Pilot Securities. A Marketing Fee of \$0.65 per contract will be assessed to Market Makers for transactions in Non-Penny Pilot Securities. A list of option classes included in the Penny Pilot Program is available on the Exchange's Web site. The Exchange's marketing fees are the same as Miami International Securities Exchange, Inc. ("MIAX"), Chicago Board Options Exchange, Inc. ("CBOE"), International Securities Exchange, Inc. ("ISE"), the NYSE MKT LLC ("NYSE MKT"), and the Nasdaq OMX PHLX LLC ("PHLX") for transactions in option classes that are Penny Pilot Securities. For option classes that are Non-Penny Pilot Securities, the Exchange's Marketing Fees is less than MIAX and PHLX (\$0.70 each respectively) and equal to CBOE, ISE and the NYSE MKT (\$0.65 each respectively).

#### Port Fees

The Exchange proposes to: (i) offer logical ports free of charge; and (ii) adopt fees for physical connectivity.

**Logical Ports.** The Exchange proposes to provide logical ports (including Multicast PITCH Spin Server and GRP ports), as well as ports with bulk quoting capabilities, free of charge. A logical port represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-Member and grants that Member or non-Member the ability to operate a specific application, such as FIX order entry or PITCH data receipt. The Exchange's Multicast PITCH data feed<sup>12</sup> is available from two primary feeds, identified as the "A feed" and the

"C feed", which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant feeds, identified as the "B feed" and the "D feed." The Exchange also offers a bulk-quoting interface which allows Users<sup>13</sup> of EDGX Options to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting. The bulk-quoting application would allow Users to provide quotations in many different options.

**Physical Connectivity.** The Exchange does, however, propose to adopt fees for physical connectivity. A physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. The Exchange proposes to assess the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,000 per physical port that connects to the System via 1 gigabyte circuit; and \$4,000 per physical port that connects to the System via 10 gigabyte circuit. The Exchange will pass-through in full any fees or costs in excess of \$1,000 incurred by the Exchange to complete a cross-connect. These proposed fees are identical to those currently provided for in the fee schedule applicable to the Exchange's equities trading platform ("EDGX Equities") and those of its affiliates, BATS Exchange, Inc. ("BZX") (including BZX Options), EDGA Exchange, Inc. ("EDGA"), and BATS Y-Exchange, Inc. ("BYX").<sup>14</sup>

#### Market Data Definitions and Product

The Exchange proposes to include in its fee schedule the following defined terms that relate to the Exchange's market data fees. The proposed definitions are designed to provide greater transparency with regard to how the Exchange provides for market data. The Exchange notes that none of the proposed definitions are designed to adopt any fee. Instead, the Exchange is adopting definitions to avoid confusion for Members and non-Members who are familiar with market data fees on other exchanges, including the Exchange's

affiliates. Each of these definitions are identical to those currently provided for in the Exchange's equities fee schedule and those of its affiliates.<sup>15</sup>

First, a "Distributor" of an Exchange Market Data product would be 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. An "Internal Distributor" of an Exchange Market Data product would be 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. Meanwhile, an "External Distributor" of an Exchange Market Data product would be 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.

A "User" of an Exchange Market Data product would be defined as a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. A "Non-Professional User" of an Exchange Market Data product would be 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. Lastly, a "Professional User" of an Exchange Market Data product would be defined as any User other than a Non-Professional User.

The Exchange will offer a market data product called Multicast PITCH.<sup>16</sup> Multicast PITCH is an uncompressed data feed that offers depth of book quotations and execution information based on options orders entered into the System. The Exchange proposes to offer the Multicast PITCH feed free of charge.

<sup>13</sup> A User on EDGX Options is either a member of EDGX Options or a sponsored participant who is authorized to obtain access to the Exchange's system pursuant to Exchange Rule 11.3.

<sup>14</sup> See fee schedules for EDGX Equities, BZX, BZX Options, EDGA, and BYX.

<sup>15</sup> *Id.*

<sup>16</sup> See Exchange Rule 21.15(b)(1).

<sup>12</sup> See Exchange Rule 21.15(b)(1).

## BATS Connect

In December 2014, the Exchange filed a proposed rule change with the Commission to adopt a communication and routing service now known as BATS Connect.<sup>17</sup> The Exchange now proposes to adopt fees related to the use of BATS Connect that are equal to the fees charged for an identical service, also called BATS Connect, offered by the Exchange's affiliates. The Exchange notes that BATS Connect is offered by all of the Exchange's affiliated exchanges. The Exchange believes that the fees should also be appropriately set forth on the fee schedule of EDGX Options because BATS Connect will be offered to all Exchange Members, including Members that participate primarily or exclusively on EDGX Options.

BATS Connect is offered by the Exchange on a voluntary basis in a capacity similar to a vendor. In sum, BATS Connect is a communication service that provides subscribers an additional means to receive market data from and route orders to any destination connected to the Exchange's network. BATS Connect does not provide any advantage to subscribers for connecting to the Exchange's affiliates as compared to other methods of connectivity available to subscribers. The servers of the subscriber need not be located in the same facilities as the Exchange in order to subscribe to BATS Connect. Subscribers may also seek to utilize BATS Connect in the event of a market disruption where other alternative connection methods become unavailable.

The Exchange will charge a monthly connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and broker-dealers that are connected to the Exchange's network. The amount of the connectivity fee varies based solely on the bandwidth selected by the subscriber. Specifically, the Exchange proposes to charge \$350 for 1 Mb, \$700 for 5 Mb, \$950 for 10 Mb, \$1,500 for 25 Mb, \$2,500 for 50 Mb, and \$3,500 for 100 Mb.

BATS Connect allows subscribers to receive market data feeds from the exchanges connected to the Exchange's network. In such case, the subscriber would pay the Exchange a connectivity fee, which varies and is based solely on the amount of bandwidth required to transmit the selected data product to the

subscriber. The proposed connectivity fees are set forth in the Exhibit 5 attached hereto and range from no charge to \$11,500 based on the market data product the subscriber selects.

The Exchange also proposes to adopt a discounted fee of \$4,160 per month for subscribers who purchase connectivity to a bundle of select market data products. The following market data products would be included in the bundle: UQDF/UTDF/OMDF, CQS/CTS, Nasdaq TotalView, Nasdaq BX TotalView, Nasdaq PSX TotalView, NYSE ArcaBook, NYSE MKT OpenBook Ultra, and BBS/TTDS. Absent the discount, a subscriber purchasing connectivity through BATS Connect for each of these market data products would pay a total monthly fee of \$5,200. As proposed, a subscriber who purchases connectivity to each of the above market data products would be charged a monthly fee of \$4,160, which represents a 20% discount. The subscribers would pay any fees charged by the exchange providing the market data feed directly to that exchange.

The Exchange notes that it will not charge a fee to subscribers utilizing BATS Connect to route orders to or receive market data products from the Exchange's affiliates, EDGA, BZX (including BZX Options), and BYX. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would continue to be liable for the necessary fees charged by that exchange or market center, including any required connectivity fees. Market participants who chose a method other than BATS Connect to connect to another exchange or market center would also pay any required connectivity fees directly to that exchange or market center. Likewise, BATS Connect subscribers would be liable for any connectivity fees charged by the Exchange's affiliate.

## 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.<sup>18</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>19</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system

which the Exchange operates or controls.

## Standard Rates and Routing Rates

The Exchange believes its proposed standard rates as well as rates for routed orders are equitable and reasonable. The Exchange will operate in a highly competitive market in which market participants may readily send order flow to any of twelve competing venues if they deem fees at the Exchange to be excessive. Initially, the Exchange does not propose to implement a tiered pricing structure under which it would provide enhanced rebates or reduced fees based on the Member's monthly trading activity. Nor does the Exchange propose to implement "maker-taker" pricing. As a new options exchange, the proposed fee structure is intended to attract order flow to the Exchange by offering market participants a competitive and simplified pricing structure.

The Exchange believes it is equitable, reasonable and non-discriminatory to implement a fee structure under which standard rates are applied, the amount of which depend on whether the order is for a Customer, Non-Customer, or Market Maker as well as the capacity of the order with which such order trades. The Exchange believes that application of a simple pricing structure that groups participants together is advantageous to all Members of EDGX Options.

The Exchange believes it is equitable, reasonable and non-discriminatory to charge fees to Non-Customers (including Market Makers) and provide a rebate to Customers when their orders execute against each other. Non-Customer accounts generally engage in increased trading activity as compared to Customer accounts. This level of trading activity draws on a greater amount of Exchange system resources than that of Customers. Simply, the more orders submitted to the Exchange, the more messages sent to and received from the Exchange, and the more Exchange system resources utilized. This level of trading activity by Non-Customer accounts results in greater ongoing operational costs to the Exchange.<sup>20</sup> As such, the Exchange aims to recover its costs by fees to Non-Customers when they execute against a Customer order. Sending orders to and trading on the Exchange are entirely voluntary. Under these circumstances, Exchange transaction fees must be competitive to attract order flow, execute orders, and grow its market. Other options

<sup>17</sup> See the EDGX equities fee schedule available at [http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/). See also Securities Exchange Act Release Nos. 73780 (December 8, 2014), 79 FR 73942 (December 12, 2014) (SR-EDGX-2014-28); and 75150 (June 11, 2015), 80 FR 34772 (June 17, 2015) (SR-EDGX-2015-27).

<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78f(b)(4).

<sup>20</sup> The Exchange, however, does not propose to assess ongoing fees for EDGX Options market data or fees related to order cancellation.

exchanges also provide for varying rates based on the capacity of the order.<sup>21</sup> As such, the Exchange believes its proposed trading fees are fair and reasonable.

While Non-Customer orders will be assessed transaction fees when executing against Customer orders, as proposed, Non-Customer orders will be charged no fee when executing against other Non-Customer orders. The Exchange believes it is equitable, reasonable and not unfairly discriminatory to charge no fee to a Non-Customer order that interacts with another Non-Customer order. Providing the opportunity for a Non-Customer, including a Market Maker, to be charged no fee in such scenarios is designed to encourage Non-Customers to add liquidity to the Exchange. In turn, increased liquidity attracts should help attract Customer order flow, which is beneficial to all other market participants on the Exchange that seek executions against those Customer orders. As a new entrant into the options marketplace, the Exchange believes such a pricing incentive for Non-Customers is a reasonable means to attract order flow by offering market participants a competitive pricing structure.

The Exchange also believes it is equitable, reasonable and not unfairly discriminatory to charge Market Makers lower fees than Non-Customers who are not Market Makers when executing against a Customer order. The proposed differentiation between Market Makers and other market participants such as Non-Customers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. Market Makers, unlike other market participants, have obligations to the market and regulatory requirements,<sup>22</sup> which normally do not apply to other market participants. A Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with such course of dealings. On the other hand, Non-Customers and non-Market Makers, do

not have such obligations on the Exchange.

Moreover, the Exchange believes it is equitable, reasonable and not unfairly discriminatory to charge no fee or provide a rebate to Customer orders that interacts with another Customer order. The securities markets generally, and the Exchange in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Customer benefit. Like charging no fee to Non-Customer orders that execute against other Non-Customer orders described above, charging no fee or providing a rebate to Customers is designed to encourage Customers to add liquidity to the Exchange. In turn, increased liquidity is beneficial to all other market participants on the Exchange that seek executions against those Customer orders. As such, the Exchange believes the proposed Customer transaction pricing is equitably allocated, reasonable and not unfairly discriminatory.

As explained above, the Exchange's proposal with respect to routing rates is to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify fees is fair, equitable and reasonable because the proposed fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange notes that routing through the Exchange is voluntary. The Exchange also believes that the proposed fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange reiterates 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 to be excessive or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it will continually evaluate its routing fees, including profit and loss attributable to routing, as applicable, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant

profit or loss from routing to away options exchanges.

#### Marketing Fees

The Exchange notes that the U.S. options markets are highly competitive, and the marketing fee is intended to provide an incentive for Market Makers to enter into marketing agreements with Members so that they will provide order flow to the Exchange. The marketing fee is charged only in a Market Maker's assigned classes because it is in these classes that the Market Maker has the general obligation to attract order flow to the Exchange. The Exchange believes that its program of marketing fees, which is similar to marketing fee programs that have previously been implemented on other options exchanges,<sup>23</sup> will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions. The Exchange believes that its marketing fee is reasonable since the amount of the Exchange's marketing fee is the same as other exchanges for Penny Pilot Securities and less than or equal to other exchanges for Non-Penny Pilot Securities.

#### Port Fees

The Exchange believes that the proposed logical port and physical connection fees further the objectives of Section 6(b)(4),<sup>24</sup> 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 proposal represents an equitable allocation of reasonable dues, fees, and other charges as its fees for physical connectivity are reasonably constrained by competitive alternatives. If a particular exchange charges excessive fees for connectivity, affected Members and non-Members may opt to terminate their connectivity arrangements with that exchange, and

<sup>21</sup> See Nasdaq OMX PHLX LLC ("PHLX") fee schedule available at <http://nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (charging no fee to customer orders and variable rates non-customer orders). See also Nasdaq OMX BX, Inc. fee schedule available at <http://nasdaqtrader.com/Micro.aspx?id=BXOptionsPricing>.

<sup>22</sup> See Exchange Rule 21.5, Obligations of Market Makers.

<sup>23</sup> See e.g., Securities Exchange Act Release Nos. 98415 (December 12, 2012), 77 FR 74905 (December 18, 2012) (SR-MIAX-2012-01); 53969 (June 9, 2006), 71 FR 34973 (June 16, 2006) (SR-CBOE-2006-53); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR-CBOE-2007-11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR-ISE-2007-08); and 54152 (July 14, 2006), 71 FR 41488 (July 21, 2006). See also, Securities Exchange Act Release Nos. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR-Phlx-2006-33); 54297 (August 9, 2006), 71 FR 47280 (August 16, 2006) (SR-Phlx-2006-47); 54485 (September 22, 2006), 71 FR 57017 (September 28, 2006) (SR-Phlx-2006-56); 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR-Phlx-2007-05); and 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR-Phlx-2007-12).

<sup>24</sup> 15 U.S.C. 78f(b)(4).

adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity. The Exchange believes that the proposed fees are reasonable in that they are identical to those included on the Exchange's equities fee schedule and those of its affiliates.<sup>25</sup>

Finally, the Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members and non-Members. Members and non-Members will continue to choose whether they want more than one physical port and choose the method of connectivity based on their specific needs. All Exchange Members that voluntarily select various service options will be charged the same amount for the same services. As is true of all physical connectivity, all Members and non-Members have the option to select any connectivity option, and there is no differentiation with regard to the fees charged for the service.

#### Market Data Definitions and Products

The Exchange believes that the proposed definitions are reasonable because they are designed to provide greater transparency to Members and non-Members with regard to how the Exchange provides for market data. The Exchange believes that Members would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange may assess fees if such fees are proposed in the future. These definitions are intended to make the fee schedule clearer and less confusing for Members and non-Members and eliminate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Lastly, the proposed definitions are identical to those

included in the Exchange's equities fee schedule and those of its affiliates.<sup>26</sup>

The Exchange believes that its proposal to provide its Multicast PITCH feed free of charge is consistent with Section 6(b)(4) of the Act<sup>27</sup> because it provides for an equitable allocation of reasonable dues, fees, and other charges among its members and other recipients of Exchange data. The Exchange also believes the proposal to provide Multicast PITCH free of charge is reasonable and equitable in light of the Exchange being a new entrant into the options exchange space and would enable the Exchange to attract additional order flow. Lastly, the Exchange also believes that the proposed amendments to its fee schedule are reasonable and non-discriminatory because it will apply uniformly to all Members.

#### BATS Connect

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act,<sup>28</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. The Exchange notes that its fees proposed for BATS Connect are identical to those currently charged by its affiliates, all of which have been published for comment by the Commission.<sup>29</sup>

First, the Exchange will charge a connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and market centers that are connected to the Exchange's network, which varies based solely on the amount of bandwidth selected by the subscriber. Second, with regard to utilizing BATS Connect to receive market data products from other exchanges, the Exchange would only charge subscribers a connectivity fee, the amount of which is based solely on the amount of bandwidth required to transmit that specific data product to the subscribers.

The Exchange believes it is reasonable to offer such discounted pricing to subscribers who purchase connectivity to a bundle of market data products as it would enable them to reduce their overall connectivity costs for the receipt of market data. As stated above, BATS Connect is offered and purchased on a voluntary basis and subscribers can

discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Moreover, the Exchange believes the proposed fees are reasonable and equitable because they continue to be based on the Exchange's costs to cover the amount of bandwidth required to provide connectivity to the select bundle of data feeds. The proposed fees will continue to allow the Exchange to recoup this cost, while providing subscribers with an alternative means to connect to the select bundle of data feeds at a discounted rate.

The subscribers would pay any fees: (i) Charged by the exchange providing the market data feed directly to that exchange (ii) charged by a market center to which they routed an order and an execution occurred directly to that market center. The Exchange itself would not charge any additional fees.<sup>30</sup> BATS Connect is offered and purchased on a voluntary basis, in that neither the Exchange nor subscribers are required by any rule or regulation to make this product available. Accordingly, subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

Moreover, the Exchange believes the proposed fees are reasonable and equitable because they are based on the Exchange's costs to cover hardware, installation, testing and connection, as well as expenses involved in maintaining and managing the service. The proposed fees allow the Exchange to recoup these costs, while providing subscribers with an alternative means to connect to other exchange and market centers. The Exchange believes that the proposed fees are reasonable and equitable in that they reflect the costs and the benefit of providing alternative connectivity.

The Exchange also believes it is equitable and reasonable to provide BATS Connect to subscribers for no charge to route orders to or receive market data products from the Exchange's affiliates. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would continue to be liable for the necessary fees charged by the Exchange, its affiliate, or another exchange or market center, including any required connectivity fees. As stated above, BATS Connect is offered and purchased on a voluntary basis, and

<sup>25</sup> See fee schedules for EDGX Equities, BZX, BZX Options, EDGA, and BYX (charging fees for 1 gigabyte circuit of \$2,000 per month and for 10 gigabyte circuit of \$4,000 per month).

<sup>26</sup> See fee schedules for EDGX Equities, BZX, BZX Options, EDGA, and BYX.

<sup>27</sup> 15 U.S.C. 78f(b)(4).

<sup>28</sup> 15 U.S.C. 78f(b)(4).

<sup>29</sup> See fee schedules for EDGX Equities, BZX, BZX Options, EDGA, and BYX (charging identical fees to those proposed herein for the BATS Connect service).

<sup>30</sup> The Exchange's rules and fees would not address the fees or manner of operation of any destination to which the subscriber asked that an order be routed.

subscribers and market participants may choose an alternative method to connect to the Exchange, its affiliates, or another exchange or market center connected to the Exchange's network. Such other services may also offer at no charge connectivity to certain exchanges or a group of exchanges.<sup>31</sup> Therefore, the Exchange believes that providing BATS Connect to subscribers at no charge to route orders to or receive market data products from the Exchange's affiliates is reasonable and equitable as they will continue to be liable to the Exchange or its affiliate for any required connectivity fees.

Lastly, the Exchange also believes that the proposed fees for BATS Connect are non-discriminatory because they will apply uniformly to all subscribers. All subscribers that voluntarily select various service options will be charged the same amount for the same services. All subscribers have the option to select any connectivity option, and there is no differentiation among subscribers with regard to the fees charged for the service. Further, the benefits of selecting such services are the same for all subscribers, irrespective of whether their servers are located in the same facility as the Exchange.

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

The Exchange believes its proposed amendments 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 believes that its proposed pass through rates for orders routed to and executed on an away options exchange would increase competition because they offer customers an alternative means to route to those destinations.

The Exchange believes that its program of marketing fees, which is similar to marketing fee programs that have previously been implemented on

other options exchanges,<sup>32</sup> will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions.

The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members and non-Members equally.

Lastly, the Exchange does not believe the proposed fees for BATS Connect will result in any burden on competition. The proposed rule change is designed to provide subscribers with an alternative means to access other market centers on the Exchange's network if they choose or in the event of a market disruption where other alternative connection methods become unavailable. BATS Connect is not the exclusive method to connect to these market centers and subscribers may utilize alternative methods to connect to the product if they believe the Exchange's proposed pricing is unreasonable or otherwise. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

*(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>33</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>34</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 proposal 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-EDGX-2015-56 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-EDGX-2015-56. 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 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-EDGX-2015-56 and should be submitted on or before December 14, 2015.

<sup>31</sup> See NYSE's SFTI Americas Product and Service List available at <http://www.nyxdata.com/docs/connectivity> (offering at no charge connectivity to the NYSE, NYSE MKT LLC, and NYSE Arca, Inc.).

<sup>32</sup> See *supra* note 23.

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>34</sup> 17 CFR 240.19b-4(f).



For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76454; File No. SR-BX-2015-067]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Sponsored Access

November 17, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 4, 2015, NASDAQ OMX BX, Inc. ("BX" or "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 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 amend BX Rule 4615 entitled, "Sponsored Participants" to: (1) Define the term "Sponsored Access" and "Customer Agreement;" (2) specify the requirements to comply with Rule 15c3-5 under the Securities Exchange Act of 1934 ("Market Access Rule"); and (3) remove the requirement that each Sponsored Participant and each Sponsoring Member must enter into certain agreements with the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.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 aspects of such statements.

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

###### 1. Purpose

The purpose of the filing is to amend BX Rule 4615 entitled, "Sponsored Participants" to: (1) Define the term "Sponsored Access," and specifically stating that compliance with the Market Access Rule is required, and defining "Customer Agreement" to refer to the agreement that must be executed between the Sponsoring Participant and the Sponsoring Member; (2) specify the requirements to comply with the Market Access Rule; and (3) remove the requirement that each Sponsored Participant and each Sponsoring Member must enter into certain agreements with the Exchange to streamline its rule and remove unnecessarily burdensome notice requirements to the Exchange.

###### Defining Sponsored Access

A Sponsored Participant may be a member or a non-member of the Exchange, such as an institutional investor, that gains access to the Exchange<sup>3</sup> and trades under a Sponsoring Member's execution and clearing identity pursuant to sponsorship arrangements currently set forth in BX Rule 4615. The Exchange is proposing to define the term "Sponsored Access" to clarify the type of market access arrangement that is subject to BX Rule 4615. The Exchange proposes to amend BX Rule 4615(a) to add the following definition, "Sponsored Access shall mean an arrangement whereby a member permits its customers to enter orders into the Exchange's System that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third party technology provider." This definition was derived from the

<sup>3</sup> For example, a broker-dealer may allow its customer—whether an institution such as a hedge fund, mutual fund, bank or insurance company, an individual, or another broker-dealer—to use the broker-dealer's MPID, account or other mechanism or mnemonic used to identify a market participant for the purposes of electronically accessing the Exchange.

Commission's description of Sponsored Access used in the release approving the Market Access Rule.<sup>4</sup> The Exchange believes that defining Sponsored Access in BX Rule 4615 will provide market participants with greater clarity concerning Sponsored Access and their obligations with respect to this type of access arrangement.

###### Defining Customer Agreement

The Exchange proposes to amend BX Rule 4615(b)(i) to define the agreement that Sponsored Participants must enter into and maintain with one or more Sponsoring Members to establish proper relationship(s) and account(s) through which the Sponsored Participant may trade on the BX Market, as a "Customer Agreement."

###### Market Access Rule

Pursuant to BX Rule 4615, the Sponsoring Member is responsible for the activities of the Sponsored Participant. Sponsored Participants are required to have procedures in place to comply with Exchange rules, and the Sponsoring Member takes responsibility for the Sponsored Participant's activity on the Exchange. Members may have multiple Sponsored Access relationships in place at a given time. The Exchange's examination program assesses compliance with BX Rule 4615, among other rules.<sup>5</sup> The Exchange proposes to specifically enumerate within BX Rule 4615 the member's obligation to comply with the Market Access Rule, which members are currently required to comply with respecting market access. The Exchange believes that specifying the obligation to comply with the Market Access Rule specifically will reinforce that BX Rule 4615 presupposes member compliance with the Market Access Rule.

###### Elimination of Certain Contract Requirements

At this time, the Exchange proposes to remove requirements to submit certain forms to the Exchange. There are three forms that are currently required by BX Rule 4615: (1) An agreement between the Sponsored Participant and the Exchange ("Exchange Agreement"); (2) a

<sup>4</sup> The Market Access Rule, among other things, requires broker-dealers providing others with access to an exchange or alternative trading system to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of providing such access. See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

<sup>5</sup> The Exchange has a Regulatory Services Agreement with Financial Industry Regulatory Authority ("FINRA") to conduct regulatory examinations, among other obligations.

<sup>35</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.