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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-79760; File No. SR-BatsBYX-2016-40]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Fees for Connectivity and its Communication and Routing Service Known as Bats Connect  
January 9, 2017

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 December 27, 2016, Bats BYX Exchange, Inc. (“Exchange” or “BYX”) 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 BYX Rules 15.1(a) and (c) to modify its fees for physical ports, logical ports, and for the use of a communication and routing service known as

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<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).

Bats Connect.

The text of the proposed rule change is available at the Exchange's website 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 fees for physical ports, logical ports, and for the use of a communication and routing service known as Bats Connect. Each of these proposed changes are described below.

Physical Ports

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 currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis:

\$2,000 per physical port that connects to the System<sup>6</sup> via 1 gigabyte circuit; and \$4,000 per physical port that connects to the System via 10 gigabyte circuit. The Exchange proposes to increase the fee per physical port that connects to the System via a 10 gigabyte circuit from \$4,000 per month to \$6,000 per month in order cover its increased infrastructure costs associated with establishing physical ports to connect to the Exchange's Systems and enable it to continue to maintain and improve its market technology and services. The Exchange does not propose to amend the fee for a 1 gigabyte circuit, which will remain \$2,000 per month.

#### Logical Ports

The Exchange currently charges for logical ports (including Multicast PITCH Spin Server and GRP ports) \$500 per port per month. 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. Logical port fees are limited to logical ports in the Exchange's primary data center and no logical port fees are assessed for redundant secondary data center ports. The Exchange assesses the monthly per logical port fees to all Members' and non-Members' logical ports. The Exchange now proposes to increase charges for logical ports (including Multicast PITCH Spin Server and GRP ports) from \$500 per port per month to \$550 per month. Like as for the proposed fee increase for physical ports described above, the proposed increase in logical port fees is intended to cover increased infrastructure costs associated with establishing ports to connect to the Exchange's Systems and to enable the Exchange to continue to maintain and improve its market technology

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<sup>6</sup> The term "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." See Exchange Rule 1.5(aa).

and services.

### Bats Connect

The Exchange proposes to increase select fees related to the use of Bats Connect. Bats Connect is offered by the Exchange on a voluntary basis in a capacity similar to a vendor.<sup>7</sup> 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<sup>8</sup> as compared to other methods of connectivity. 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 charges 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 via unicast access. The amount of the connectivity fee varies based solely on the bandwidth selected by the subscriber. Specifically, as set forth under the Unicast Access – Order Entry section of the fee schedule, the Exchange charges \$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. The Exchange proposes to increase those fees as follows: \$500 for 1 Mb, \$1,000 for 5 Mb, and \$1,250 for 10 Mb. The proposed increases are designed to cover increased costs related to hardware, installation, and testing, as well as increased expenses involved in maintaining and managing the service. The Exchange does not propose to increase the fees for the 25 Mb, 50 Mb and 100 Mb connections as

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<sup>7</sup> See Exchange Rule 13.8.

<sup>8</sup> The Exchange's affiliated exchanges are Bats EDGX Exchange, Inc. ("EDGX"), Bats EDGA Exchange, Inc. ("EDGA"), and Bats BZX Exchange, Inc. ("BZX").

those fees will remain \$1,500, \$2,500, and \$3,500, respectively.

Bats Connect also allows subscribers to receive market data feeds from the exchanges connected to the Exchange's network. In such case, the subscriber pays the Exchange a connectivity fee, which are set forth under the Market Data Connectivity section of the fee schedule and vary based solely on the amount of bandwidth required to transmit the selected data product to the subscriber.<sup>9</sup> The proposed connectivity fees currently range from no charge to \$11,500 based on the market data product the subscriber selects. The Exchange proposes to increase select connectivity fees for market data as follows:

| <b>Data Feed</b>        | <b>Current Fee</b> | <b>Proposed Fee</b> |
|-------------------------|--------------------|---------------------|
| UQDF/UTDF/OMDF          | \$650              | \$1,200             |
| CQS/CTS                 | \$1,000            | \$1,400             |
| OPRA                    | \$3,500            | \$4,500             |
| Nasdaq TotalView        | \$1,300            | \$1,500             |
| Nasdaq BX TotalView     | \$650              | \$1,000             |
| Nasdaq PSX TotalView    | \$350              | \$750               |
| NYSE Integrated         | \$11,500           | \$14,500            |
| NYSE ArcaBook           | \$1,000            | \$1,250             |
| NYSE MKT OpenBook Ultra | \$150              | \$500               |
| NYSE Alerts             | \$250              | \$500               |
| NYSE Imbalances         | \$100              | \$500               |
| NYSE Arca Trades        | \$250              | \$500               |
| BBDS/TDDS               | \$100              | \$500               |

The proposed increases are designed to allow the Exchange to cover the increased costs related to the amount of bandwidth required to provide connectivity to receive market data as well as the costs of maintaining that infrastructure.

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<sup>9</sup> Subscribers pays any fees charged by the exchange providing the market data feed directly to that exchange.

The Exchange also charges a discounted fee of \$4,160 per month for subscribers who purchase connectivity to a bundle of select market data products, known as the U.S. Equities Select + SIP Bundle. The following market data products are included in the bundle: UQDF/UTDF/OMDF, CQS/CTS, Nasdaq TotalView, Nasdaq BX TotalView, Nasdaq PSX TotalView, NYSE ArcaBook, NYSE MKT OpenBook Ultra, and BBDS/TTDS.<sup>10</sup> Absent the discount, a subscriber purchasing connectivity through Bats Connect for each of these market data products would currently pay a total monthly fee of \$5,200. Instead, a subscriber who purchases connectivity to each of the above market data products is charged a monthly fee of \$4,160, which represents a 20% discount. The Exchange proposes to add NYSE OpenBook Ultra to the bundle. Also, in light of the proposed changes outlined above, the Exchange proposes to increase the discounted rate of the bundle to \$5,910 per month, which would now represent a 40% discount from the rate of \$9,850 a subscriber purchasing connectivity through Bats Connect for each of these market data products would be charged under the proposed rule change.

Lastly, the Exchange proposes to charge a discounted fee of \$6,390 per month for subscribers who purchase connectivity to the OPRA, UQDF/UTDF/OMDF, and CQS/CTS data feeds, to be known as the OPRA + SIP Bundle. Absent the discount, a subscriber purchasing connectivity through Bats Connect for each of these market data products would pay a total monthly fee of \$7,100. Instead, a subscriber who purchases connectivity to each of the above market data products is charged a monthly fee of \$6,390, which represents a 10% discount.

#### Implementation Date

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<sup>10</sup> The Exchange also proposes to correct a typographical error in referencing BBDS/TDDS in its description of the U.S. Equity Select + SIP bundle.

The Exchange proposes to implement this amendment to its fee schedule on January 3, 2017.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>13</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 rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

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 adopt a possible range of alternative strategies, including routing to the

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<sup>11</sup> The Exchange notes that the date of its fee schedule was previously updated to January 3, 2017 in SR-BatsBYX-2016-39 (December 6 [sic], 2017). See Securities Exchange Act Release No. 79623 (December 20, 2016).

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

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.

Furthermore, the proposed rule change is also an equitable allocation of reasonable dues, fees, and other charges as the Exchange believes that the increased fees obtained will enable it to cover its increased infrastructure costs associated with establishing physical ports to connect to the Exchange's Systems. The additional revenue from the increased fees will also enable the Exchange to continue to maintain and improve its market technology and services.

#### Physical Ports

The Exchange believes that the proposed fees for a 10 gigabyte circuit of \$6,000 per month is reasonable in that they are less than analogous fees charged by the Nasdaq Stock Market LLC ("Nasdaq") and NYSE Arca, Inc. ("Arca"), which range from \$10,000 - \$15,000 per month for 10 gigabyte circuits.<sup>14</sup> 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

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<sup>14</sup> See Nasdaq Rule 7034(b) and the NYSE Arca fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) (dated December 2, 2016).



option to select any connectivity option, and there is no differentiation with regard to the fees charged for the service.

#### Logical Ports

The Exchange believes that the increase of fees for logical ports represents an equitable allocation of reasonable dues, fees and other charges. The Exchange believes that its proposed changes to logical port fees are reasonable in light of the benefits to Exchange participants of direct market access and receipt of data. The Exchange believes its proposed fees are reasonable because Nasdaq and NYSE Arca charge comparable rates for logical ports to access such markets.<sup>15</sup>

#### Bats Connect

The Exchange also believes that its proposed fees for Bats Connect provide for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. First, the Exchange charges 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. The proposed increased connectivity fees remain reasonable and competitive as compared to similar fees charged by other exchanges. For purposes of order routing, the Exchange proposes to now charge \$500 for 1 Mb, \$1,000 for 5 Mb, and \$1,250 for 10 Mb. The New York Stock Exchange, Inc. ("NYSE") currently charges \$300 for 1 Mb, \$700 for 5 Mb, and

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<sup>15</sup> See Nasdaq Rule 7015(b) (charging a fee of \$575 per month for FIX Trading Ports) and the NYSE Arca fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) (dated December 2, 2016) (charging a fee of \$550 per month for ports for order/quote entry).

\$900 for 10 Mb.<sup>16</sup> In addition, the proposed rates continue to be less than what a subscriber would pay to connect directly to another exchange.<sup>17</sup> The Exchange notes that, overall, the connectivity fee for routing of orders to other market centers proposed by the Exchange is similar to that charged by the NYSE.

Second, with regard to utilizing Bats Connect to receive market data products from other exchanges, the Exchange only charges 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 necessary to increase the rates for select market data feeds as described herein to address changes in bandwidth necessary to receive such feeds. The increased fees will also enable the Exchange to continue to cover the increased infrastructure costs while also enabling it to continue to maintain and improve the service.

The amounts of the connectivity fees continue to be reasonable as compared to similar fees charged by other exchanges. For example, for market data connectivity, Nasdaq charges \$1,412 per month for CQS/CTS data feed, and the Exchange proposes to charge \$1,400 per month connectivity for CQS/CTS data feed.<sup>18</sup>

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. The Exchange is not required by

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<sup>16</sup> See Section 3.6.1 of NYSE's SFTI Americas Product and Service List available at <http://www.nyxdata.com/docs/connectivity>.

<sup>17</sup> See e.g., Nasdaq Rule 7034(b) and the Co-Location section of the NYSE Arca fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) (dated December 2, 2016).

<sup>18</sup> See Nasdaq Rule 7034 (setting forth Nasdaq's connectivity fees for receipt of third party market data products).

any rule or regulation to make Bats Connect available; nor are subscribers required by any rule or regulation to utilize Bats Connect. 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 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.

Lastly, 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.

(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. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. The Exchange does not believe that the proposed changes represent 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. Further,

excessive fees for connectivity would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

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 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>19</sup> and paragraph (f) of Rule 19b-4 thereunder. 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

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsBYX-2016-40 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-BatsBYX-2016-40. This file number should be included on the subject line if e-mail 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsBYX-2016-40 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).

