

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2017 - * 04 Amendment No. (req. for Amendments *)
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Filing by Bats EDGX Exchange, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires * <input type="text"/>			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes a rule change to adopt Option Regulatory Fees as they relate to the equity options platform.

Contact Information
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Chris Last Name * Solgan
 Title * Assistant General Counsel
 E-mail * csolgan@bats.com
 Telephone * (646) 856-8723 Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.
(Title *)
Assistant General Counsel

Date 01/30/2017
By Chris Solgan (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² Bats EDGX Exchange, Inc. (the “Exchange” or “EDGX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members³ and non-Members of the Exchange pursuant to Exchange Rules 15.1(a) and (c) to adopt an Options Regulatory Fee (“ORF”).

The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(a) Not applicable.

(b) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on February 11, 2014. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Eric Swanson

Chris Solgan

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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).

EVP, General Counsel
(913) 815-7000

Assistant General Counsel
(646) 856-8723

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

(a) Purpose

The Exchange proposes to modify its fee schedule applicable to its equity options platform ("EDGX Options") to adopt an ORF in the amount of \$0.0004 per contract side.⁴ The per-contract ORF will be assessed by the Exchange to each Member for all options transactions executed and cleared, or simply cleared, by the Member, that are cleared by OCC in the "customer" range, regardless of the exchange on which the transaction occurs.⁵ The ORF will be collected indirectly from Members through their clearing firms by OCC on behalf of the Exchange.

The ORF also will be charged for transactions that are not executed by a Member

⁴ The Exchange notes that it previously proposed to adopt an ORF of \$0.0002 per contract in August 2016 which would have been assessed to each Member and non-Member for all options transactions cleared by OCC in the "customer" range, regardless of the exchange on which the transaction occurred. See Securities Exchange Act Release No. 78452 (August 1, 2016), 81 FR 51951 (August 5, 2016) (SR-BatsEDGX-2016-33). The Exchange then filed to delay the implementation of SR-BatsEDGX-2016-33 until February 1, 2017. See Securities Exchange Act Release No. 78745 (September 1, 2016), 81 FR 62185 (September 8, 2016) (SR-BatsEDGX-2016-48). The Commission later issued an order suspending and SR-BatsEDGX-2016-33 and instituted proceedings to determine whether to approve or disapprove the proposed rule change asking whether the "a sufficient regulatory nexus exists between the Exchange and a non-Member to justify imposition of the ORF on such non-Member." See Securities Exchange Act Release No. 78850 (September 15, 2016), 81 FR 64963 (September 21, 2016). On January 10, 2017, the Exchange withdrew SR-Bats-EDGX-2016-33. The Exchange also proposes in this filing to remove text from its fee schedule adopted in SR-BatsEDGX-2016-48 which delayed the implementation of SR-Bats-EDGX-2016-33 until February 1, 2017.

⁵ The Exchange also proposes to insert a colon after the title "Options Regulatory Fee".

but are ultimately cleared by a Member. In the case where a non-Member executes a transaction and a Member clears the transaction, the ORF will be assessed to the Member who clears the transaction. In the case where a Member executes a transaction and another Member clears the transaction, the ORF will be assessed to the Member who clears the transaction.

Clearing members, however, are distinguished from executing participants because they remain identified to the Exchange regardless of the identity of the initiating executing participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to assess the ORF to clearing members.

The Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to a Member's activities supports applying the ORF to transactions cleared but not executed by a Member. The Exchange's regulatory responsibilities are the same regardless of whether a Member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading. These activities span across multiple exchanges.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated

from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority, Inc. ("FINRA") under a 17d-2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF at least 30 calendar days prior to the effective date of the change.⁶

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by Members and their associated persons under the Act and the rules of the Exchange and to

⁶ The Exchange announced its intent to charge an ORF on December 30, 2016. See Bats Options Exchange Regulatory Fee Schedule Update Effective February 1, 2017 available at http://cdn.batstrading.com/resources/fee_schedule/2017/Bats-Options-Exchange-Regulatory-Fee-Schedule-Update-Effective-February-1-2017.pdf. The semi-annual review and notice provisions are similar to those adopted by NYSE Arca, Inc. ("NYSE Arca"). See Securities Exchange Act Release No. 70500 (September 25, 2013), 78 FR 60361 (October 1, 2013) (SR-NYSEArca-2013-91).

surveil for other manipulative conduct by market participants (including non-Members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail ("COATS")⁷ system in order to surveil a Member's activities across markets.

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group ("ISG"),⁸ the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.⁹

⁷ COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

⁸ ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by co-operatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

⁹ See Section 6(h)(3)(I) of the Act.

The Exchange believes that charging the ORF across markets will avoid having Members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a Member would send their orders to the least cost, least regulated exchange. Other exchanges do impose a similar fee on their member's activity, including the activity of those members on the Exchange.¹⁰

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRA's Trading Activity Fee¹¹ and the MIAX, NYSE Amex, NYSE Arca, CBOE, PHLX, ISE and BOX ORFs. While the Exchange does not have all of the same regulatory responsibilities as FINRA, the Exchange believes that, like other exchanges that have adopted an ORF, its broad regulatory responsibilities with respect to a Member's activities, irrespective of where their transactions take place, support a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a Member's customer options transactions.

Implementation Date

The Exchange proposes to implement the ORF on February 1, 2017.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the

¹⁰ Similar regulatory fees have been instituted by PHLX, ISE, and MIAX. See Securities Exchange Act Release Nos. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100); 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR-ISE-2009-105); and 68711 (January 23, 2013), 78 FR 6155 (January 29, 2013) (SR-MIAX-2013-01).

¹¹ See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

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.¹² Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹³ 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 it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

The Exchange believes the ORF is equitable and not unfairly discriminatory because it would be objectively allocated to Members in that it would be charged to all Members on all their transactions that clear as customer transactions at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those Members that are directly based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Member proprietary transactions) of its regulatory program. In addition, the Exchange believes the amount of the ORF is reasonable as it is lower than ORFs charged by other exchanges. By way of comparison,

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4).

MIAX charges an ORF of \$0.0045 per contract side,¹⁴ and both NYSE Arca and NYSE Amex charge an ORF of \$0.0055 per contract side.¹⁵

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor, on at least a semi-annual basis the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines,¹⁴ does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular.

The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the initial level of the fee is

¹⁴ See MIAX fee schedule available at http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_01012017.pdf (last visited January 10, 2017).

¹⁵ See NYSE Arca Options fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (last visited January 10, 2017); and NYSE Amex fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf (last visited January 10, 2017).

reasonable.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The proposed ORF is also comparable to ORF charged by other options exchanges for the same or similar service.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁶ and Rule 19b-4(f)(2) thereunder,¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BatsEDGX-2017-04)

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Option Regulatory Fees as they Relate to the Equity Options Platform

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on _____, Bats EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and non-Members of the Exchange pursuant to Exchange Rules 15.1(a) and (c) to adopt an Options Regulatory Fee (“ORF”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to modify its fee schedule applicable to its equity options platform ("EDGX Options") to adopt an ORF in the amount of \$0.0004 per contract side.⁶ The per-contract ORF will be assessed by the Exchange to each Member for all

⁶ The Exchange notes that it previously proposed to adopt an ORF of \$0.0002 per contract in August 2016 which would have been assessed to each Member and non-Member for all options transactions cleared by OCC in the "customer" range, regardless of the exchange on which the transaction occurred. See Securities Exchange Act Release No. 78452 (August 1, 2016), 81 FR 51951 (August 5, 2016) (SR-BatsEDGX-2016-33). The Exchange then filed to delay the implementation of SR-BatsEDGX-2016-33 until February 1, 2017. See Securities Exchange Act Release No. 78745 (September 1, 2016), 81 FR 62185 (September 8, 2016) (SR-BatsEDGX-2016-48). The Commission later issued an order suspending and SR-BatsEDGX-2016-33 and instituted proceedings to determine whether to approve or disapprove the proposed rule change asking whether the "a sufficient regulatory nexus exists between the Exchange and a non-Member to justify imposition of the ORF on such non-Member." See Securities Exchange Act Release No. 78850 (September 15, 2016), 81 FR 64963 (September 21,

options transactions executed and cleared, or simply cleared, by the Member, that are cleared by OCC in the “customer” range, regardless of the exchange on which the transaction occurs.⁷ The ORF will be collected indirectly from Members through their clearing firms by OCC on behalf of the Exchange.

The ORF also will be charged for transactions that are not executed by a Member but are ultimately cleared by a Member. In the case where a non-Member executes a transaction and a Member clears the transaction, the ORF will be assessed to the Member who clears the transaction. In the case where a Member executes a transaction and another Member clears the transaction, the ORF will be assessed to the Member who clears the transaction.

Clearing members, however, are distinguished from executing participants because they remain identified to the Exchange regardless of the identity of the initiating executing participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to assess the ORF to clearing members.

The Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to a Member’s activities supports applying the ORF to transactions cleared but not executed by a Member. The Exchange’s regulatory

2016). On January 10, 2017, the Exchange withdrew SR-Bats-EDGX-2016-33. The Exchange also proposes in this filing to remove text from its fee schedule adopted in SR-BatsEDGX-2016-48 which delayed the implementation of SR-Bats-EDGX-2016-33 until February 1, 2017.

⁷ The Exchange also proposes to insert a colon after the title “Options Regulatory Fee”.

responsibilities are the same regardless of whether a Member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading. These activities span across multiple exchanges.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority, Inc. ("FINRA") under a 17d-2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF at

least 30 calendar days prior to the effective date of the change.⁸

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by Members and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-Members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail ("COATS")⁹ system in order to surveil a Member's activities across markets.

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation

⁸ The Exchange announced its intent to charge an ORF on December 30, 2016. See Bats Options Exchange Regulatory Fee Schedule Update Effective February 1, 2017 available at http://cdn.batstrading.com/resources/fee_schedule/2017/Bats-Options-Exchange-Regulatory-Fee-Schedule-Update-Effective-February-1-2017.pdf. The semi-annual review and notice provisions are similar to those adopted by NYSE Arca, Inc. ("NYSE Arca"). See Securities Exchange Act Release No. 70500 (September 25, 2013), 78 FR 60361 (October 1, 2013) (SR-NYSEArca-2013-91).

⁹ COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

in the Intermarket Surveillance Group (“ISG”),¹⁰ the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange’s participation in ISG helps it to satisfy the requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.¹¹

The Exchange believes that charging the ORF across markets will avoid having Members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a Member would send their orders to the least cost, least regulated exchange. Other exchanges do impose a similar fee on their member’s activity, including the activity of those members on the Exchange.¹²

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRA’s Trading Activity Fee¹³ and the MIAX, NYSE Amex, NYSE Arca, CBOE, PHLX, ISE and BOX ORFs. While the Exchange does not have all

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¹¹ See Section 6(h)(3)(I) of the Act.

¹² Similar regulatory fees have been instituted by PHLX, ISE, and MIAX. See Securities Exchange Act Release Nos. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100); 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR-ISE-2009-105); and 68711 (January 23, 2013), 78 FR 6155 (January 29, 2013) (SR-MIAX-2013-01).

¹³ See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

of the same regulatory responsibilities as FINRA, the Exchange believes that, like other exchanges that have adopted an ORF, its broad regulatory responsibilities with respect to a Member's activities, irrespective of where their transactions take place, support a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a Member's customer options transactions.

Implementation Date

The Exchange proposes to implement the ORF on February 1, 2017.

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.¹⁴ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ 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 it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

The Exchange believes the ORF is equitable and not unfairly discriminatory because it would be objectively allocated to Members in that it would be charged to all Members on all their transactions that clear as customer transactions at the OCC.

Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

Members that are directly based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Member proprietary transactions) of its regulatory program. In addition, the Exchange believes the amount of the ORF is reasonable as it is lower than ORFs charged by other exchanges. By way of comparison, MIAX charges an ORF of \$0.0045 per contract side,¹⁶ and both NYSE Arca and NYSE Amex charge an ORF of \$0.0055 per contract side.¹⁷

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor, on at least a semi-annual basis the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total

¹⁶ See MIAX fee schedule available at http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_01012017.pdf (last visited January 10, 2017).

¹⁷ See NYSE Arca Options fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (last visited January 10, 2017); and NYSE Amex fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf (last visited January 10, 2017).

regulatory costs. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular.

The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. In this regard, the Exchange believes that the initial level of the fee is reasonable.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their

own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The proposed ORF is also comparable to ORF charged by other options exchanges for the same or similar service.

(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 Act¹⁸ and paragraph (f) of Rule 19b-4 thereunder.¹⁹ 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:

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

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. Please include File No. SR-BatsEDGX-2017-04 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BatsEDGX-2017-04. 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 am and 3:00 pm. 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 No. SR-BatsEDGX-2017-04 and should be submitted on or before [_____21 days from publication in the Federal Register].

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

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

Bats EDGX Options Exchange Fee Schedule

Effective [January 3]February 1, 2017

* * * * *

Unicast Access – Order Entry:

(No change).

[On February 1, 2017, the below text proposed in SR-BatsEDGX-2016-33 will go into effect.]

Options Regulatory Fee:

The per-contract Options Regulatory Fee (“ORF”) is assessed by EDGX Options to each Member for all options transactions executed and cleared, or simply cleared by the Member that are cleared by OCC in the “customer” range, regardless of the exchange on which the transaction occurs. The ORF is collected indirectly from Members through their clearing firms by OCC on behalf of EDGX Options. The Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The Exchange will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

<u>Options Regulatory Fee</u> <u>(ORF)</u>	<u>Fee Per Executed Contract Side</u>
<u>All Classes</u>	<u>\$0.0004</u>