

To the contrary, the Exchange believes that the proposed pricing structure will increase competition and hopefully draw additional volume to the Exchange for the Opening Process. The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if fee schedules at other venues are viewed as more favorable. Consequently, the Exchange believes that the degree to which IEX fees could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition of Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed in some circumstances, these different fees are not based on the type of Member entering the orders that execute in the Opening Process but on the type of order entered and all Members can submit any type of order. Further, the proposed fees are intended to encourage market participants to bring increased volume to the Exchange, which benefits all market participants.

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

Written comments were neither solicited nor received.

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)(ii) ²⁰ of the Act.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2017-28 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-IEX-2017-28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2017-28, and should be submitted on or before September 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81500; File Nos. SR-BatsBYX-2017-13; SR-BatsBZX-2017-39; SR-BatsEDGA-2017-14; SR-BatsEDGX-2017-24; SR-BOX-2017-19; SR-CBOE-2017-043; SR-IEX-2017-21; SR-ISE-2017-52; SR-MRX-2017-08; SR-MIAX-2017-24; SR-NASDAQ-2017-059; SR-BX-2017-029; SR-GEMX-2017-24; SR-PHLX-2017-47; SR-NYSE-2017-24; SR-NYSEArca-2017-60; SR-NYSEMKT-2017-31]

Self-Regulatory Organizations; Bats BYX Exchange Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; Chicago Board Options Exchange, Incorporated; Investors Exchange LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Miami International Securities Exchange, LLC; The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; Nasdaq GEMX, LLC; NASDAQ PHLX LLC; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; Order Approving Proposed Rule Changes, as Modified by Amendments, To Adopt a Consolidated Audit Trail Fee Dispute Resolution Process

August 30, 2017.

I. Introduction

On May 16, 2017,¹ May 23, 2017,² May 25, 2017,³ June 6, 2017,⁴ June 8, 2017⁵ and June 9, 2017,⁶ Bats BYX Exchange, Inc. ("Bats BYX"), Bats BZX Exchange, Inc. ("Bats BZX"), Bats EDGA Exchange, Inc. ("Bats EDGA"), Bats EDGX Exchange, Inc. ("Bats EDGX"), BOX Options Exchange LLC ("BOX"),

²² 17 CFR 200.30-3(a)(12).

¹ New York Stock Exchange, LLC, NYSE Arca, Inc., NYSE MKT LLC, and Miami International Securities Exchange LLC filed their proposed rule changes on May 16, 2017.

² Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc. and Chicago Board Options Exchange, Incorporated filed their proposed rule changes on May 23, 2017.

³ BOX Options Exchange LLC filed its proposed rule change on May 25, 2017.

⁴ Investors Exchange LLC filed its proposed rule change on June 6, 2017.

⁵ The NASDAQ Stock Market LLC and NASDAQ PHLX LLC filed their proposed rule changes on June 8, 2017.

⁶ NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC filed their proposed rule changes on June 9, 2017.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 15 U.S.C. 78s(b)(2)(B).

Chicago Board Options Exchange, Incorporated (“CBOE”), Investors Exchange LLC (“IEX”), Nasdaq ISE, LLC (“ISE”), Nasdaq MRX, LLC (“MRX”), Miami International Securities Exchange, LLC (“MIAX”), The NASDAQ Stock Market LLC (“Nasdaq”), NASDAQ BX, Inc. (“BX”), Nasdaq GEMX, LLC (“GEMX”), NASDAQ PHLX LLC (“Phlx”), New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”) and NYSE MKT LLC (“NYSE MKT”) (collectively, the “Participants”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ⁷ and Rule 19b-4 thereunder,⁸ proposed rule changes to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members. The proposed rule changes submitted by NYSE, NYSE Arca and NYSE MKT were published for comment in the **Federal Register** on June 1, 2017.⁹ The proposed rule changes submitted by MIAX, Bats BYX, Bats BZX, Bats EDGA, Bats EDGX, BOX and CBOE were published for comment in the **Federal Register** on June 7, 2017.¹⁰ The proposed rule change submitted by IEX was published for comment in the **Federal Register** on June 20, 2017.¹¹ The proposed rule change submitted by Nasdaq was published for comment in the **Federal Register** on June 22, 2017.¹² The proposed rule changes submitted by Phlx, BX, GEMX, ISE and MRX were published for comment in the **Federal Register** on June 23, 2017.¹³ Pursuant to Section 19(b)(2) of the Act,¹⁴ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule changes.¹⁵ The

Commission received no comments in response to the proposed rule changes. On August 23, 2017,¹⁶ August 24, 2017¹⁷ and August 25, 2017,¹⁸ the Participants filed Amendments to the proposed rule change.¹⁹ This order

(July 10, 2017), 82 FR 32596 (July 14, 2017); 81156 (July 18, 2017), 82 FR 34337 (July 24, 2017); 81157 (July 18, 2017), 82 FR 34338 (July 24, 2017); 81158 (July 18, 2017), 82 FR 34339 (July 24, 2017); 81159 (July 18, 2017), 82 FR 34338 (July 24, 2017); 81161 (July 18, 2017), 82 FR 34337 (July 24, 2017); 81162 (July 18, 2017), 82 FR 34336 (July 24, 2017); 81164 (July 18, 2017), 82 FR 34346 (July 24, 2017); 81165 (July 18, 2017), 82 FR 34345 (July 24, 2017); 81166 (July 18, 2017), 82 FR 34345 (July 24, 2017); 81167 (July 18, 2017), 82 FR 34337 (July 24, 2017); 81178 (July 20, 2017), 82 FR 34715 (July 26, 2017); 81179 (July 20, 2017), 82 FR 34716 (July 26, 2017); 81180 (July 20, 2017), 82 FR 34728 (July 26, 2017); and 81181 (July 20, 2017), 82 FR 34727 (July 26, 2017).

¹⁶ NYSE, NYSE Arca and NYSE MKT filed Amendment No. 1 to their proposed rule changes on August 23, 2017. Amendment No. 1 is available on the Commission’s Web site for NYSE, NYSE Arca, and NYSE MKT, respectively, at: <https://www.sec.gov/comments/sr-nyse-2017-24/nyse201724-2241267-160850.pdf>; <https://www.sec.gov/comments/sr-nysearca-2017-60/nysearca201760-2241265-160861.pdf>; and <https://www.sec.gov/comments/sr-nysemkt-2017-31/nysemkt201731-2241266-160862.pdf>.

¹⁷ Bats BYX, Bats BZX, Bats EDGA, Bats EDGX, CBOE and BOX filed Amendment No. 1 to their proposed rule changes on August 24, 2017. Amendment No. 1 is available on the Commission’s Web site for Bats BYX, Bats BZX, Bats EDGA, Bats EDGX, CBOE and BOX, respectively, at: <https://www.sec.gov/comments/sr-batsbyx-2017-13/batsbyx201713-2253932-160942.pdf>; <https://www.sec.gov/comments/sr-batsbzx-2017-39/batsbzx201739-2251466-160921.pdf>; <https://www.sec.gov/comments/sr-batsedga-2017-14/batsedga201714-2251458-160938.pdf>; <https://www.sec.gov/comments/sr-batsedgx-2017-24/batsedgx201724-2251462-160919.pdf>; <https://www.sec.gov/comments/sr-cboe-2017-043/cboe2017043-2251469-160922.pdf>; and <https://www.sec.gov/comments/sr-box-2017-19/box201719-2250011-160918.pdf>. MIAX filed Amendment No. 1 on August 22, 2017, but withdrew it on August 24, 2017. MIAX then filed Amendment No. 2 on August 24, 2017. Amendment No. 2 for MIAX is available on the Commission’s Web site at: <https://www.sec.gov/comments/sr-miax-2017-24/miax201724-2243335-160869.pdf>.

¹⁸ IEX, Phlx, Nasdaq, BX, GEMX, ISE and MRX filed Amendment No. 1 to their proposed rule changes on August 25, 2017. Amendment No. 1 is available on the Commission’s Web site for IEX, Phlx, Nasdaq, BX, GEMX, ISE and MRX, respectively, at: <https://www.sec.gov/comments/sr-iex-2017-21/iex201721-2243778-160880.pdf>; <https://www.sec.gov/comments/sr-phlx-2017-47/phlx201747-2257687-160924.pdf>; <https://www.sec.gov/comments/sr-nasdaq-2017-059/nasdaq2017059-2257689-160925.pdf>; <https://www.sec.gov/comments/sr-bx-2017-029/bx2017029-2251461-160940.pdf>; <https://www.sec.gov/comments/sr-gemx-2017-24/gemx201724-2244452-160897.pdf>; <https://www.sec.gov/comments/sr-ise-2017-52/ise201752-2244293-160891.pdf>; and <https://www.sec.gov/comments/sr-mrx-2017-08/mrx201708-2251467-160941.pdf>.

¹⁹ The Amendments amended the original filings to make technical changes to the proposed rule changes. Specifically, each Participant amended the proposed rule text to remove references to proposed “Consolidated Audit Trail Funding Fees,” as such fees are currently suspended, and replaced such term with the phrase “any fees contemplated by the CAT NMS Plan and imposed on Industry Members

approves the proposed rule changes, as modified by the Amendments.”²⁰

II. Description of the Proposed Rule Changes, as Modified by the Amendments

The Participants, along with C2 Options Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., MIAX PEARL, LLC, and NYSE National, Inc., filed with the Commission, pursuant to Section 11A of the Act²¹ and Rule 608 of Regulation NMS thereunder,²² the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”).²³ The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (“Company”), of which each Participant is a member, to operate the CAT.

Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has the discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants

pursuant to Exchange Rules.” See *infra* note 24. Each Participant also removed references to “Consolidated Audit Trail Funding Fees” from paragraphs (a)(1), (b) and (c)(1) of the proposed rule text. In addition, in connection with the merger of NYSE Arca Equities with and into NYSE Arca, Amendment No. 1 for NYSE Arca also combines NYSE Arca Equities Rule 6.6900 and NYSE Arca Rule 11.6900 into a single rule NYSE Rule 11.6900. See Securities Exchange Act Release No. 80781 (May 26, 2017), 82 FR 25369. See also Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017). The Amendments are not subject to notice and comment because they are technical amendments that do not materially alter the substance of the proposed rule changes or raise any novel regulatory issues.

²⁰ The Commission notes that for purposes of this Order, unless otherwise specified, capitalized terms used in this Order are defined as set forth in the proposals, as modified by the Amendments, or in the CAT NMS Plan. See *supra* notes 16–18; see also *infra* note 23.

²¹ 15 U.S.C. 78k–1.

²² 17 CFR 242.608.

²³ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015. The Plan was published for comment in the **Federal Register** on May 17, 2016, and approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release Nos. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016); 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

⁷ 15 U.S.C. 78s(b)(1).

⁸ 17 CFR 240.19b–4.

⁹ See Securities Exchange Act Release Nos. 80780 (May 26, 2017), 82 FR 25382; 80781 (May 26, 2017), 82 FR 25369; 80782 (May 26, 2017), 82 FR 25379.

¹⁰ See Securities Exchange Act Release Nos. 80837 (June 1, 2017), 82 FR 26526; 80836 (June 1, 2017), 82 FR 26539; 80834 (June 1, 2017), 82 FR 26542; 80835 (June 1, 2017), 82 FR 26549; 80833 (June 1, 2017), 82 FR 26529; 80831 (June 1, 2017), 82 FR 26536; and 80832 (June 1, 2017), 82 FR 26523.

¹¹ See Securities Exchange Act Release No. 80936 (June 15, 2017), 82 FR 28153.

¹² See Securities Exchange Act Release No. 80952 (June 16, 2017), 82 FR 28540 (“Notice”).

¹³ See Securities Exchange Act Release Nos. 80967 (June 19, 2017), 82 FR 28719; 80968 (June 19, 2017), 82 FR 28705; 80970 (June 19, 2017), 82 FR 28708; 80971 (June 19, 2017), 82 FR 28698; 80966 (June 19, 2017), 82 FR 28702.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ See Securities Exchange Act Release No. 81110 (July 10, 2017), 82 FR 32598 (July 14, 2017); 81112 (July 10, 2017), 82 FR 32592 (July 14, 2017); 81113

and Industry Members will pay (“CAT Fees”).²⁴ Section 11.5 of the CAT NMS Plan requires the Participants to adopt rules requiring that disputes with respect to fees charged to Industry Members pursuant to the CAT NMS Plan be determined by the Operating Committee or a designated Subcommittee. Section 11.5 of the CAT NMS Plan also states that decisions by the Operating Committee or a designated Subcommittee on such matters shall be binding on Industry Members, without prejudice to the right of any Industry Member to seek redress from the Commission pursuant to Rule 608²⁵ or in any other appropriate forum. The Participants filed the proposed rule changes to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.

Fee Dispute Resolution

The proposals state that disputes initiated by an Industry Member with respect to CAT Fees charged to such Industry Member, including disputes related to the designated tier and the fee calculated pursuant to such tier, shall be resolved by the Operating Committee, or a Subcommittee designated by the Operating Committee, pursuant to the Fee Dispute Resolution Procedures adopted by the Operating Committee pursuant to the CAT NMS Plan.²⁶ The

proposals further indicate that decisions on such matters shall be binding on Industry Members, without prejudice to the rights of any such Industry Member to seek redress from the Commission or in any other appropriate forum.²⁷

Under the Fee Dispute Resolution Procedures, an Industry Member that disputes CAT Fees charged to such Industry Member and that desires to have an opportunity to be heard with respect to such disputed CAT Fees must file a written application with the Company within 15 business days after being notified of such disputed CAT Fees.²⁸ The application must identify the disputed CAT Fees, state the specific reasons why the applicant takes exception to such CAT Fees, and set forth the relief sought.²⁹ In addition, if the applicant intends to submit any additional documents, statements, arguments or other material in support of the application, the same should be so stated and identified under the Fee Dispute Resolution Procedures.³⁰

The Participants state that the Company will refer applications for hearing and review promptly to the Fee Review Subcommittee designated by the Operating Committee with responsibility for conducting the reviews of CAT Fee disputes pursuant to these Fee Dispute Resolution Procedures.³¹ The proposals note that the Fee Review Subcommittee will keep a record of the proceedings.³²

The proposals further specify that the Fee Review Subcommittee will hold hearings promptly and will set a hearing date.³³ Under the proposed rule changes, the parties to the hearing shall furnish the Fee Review Subcommittee with all materials relevant to the proceedings at least 72 hours prior to the hearing, and each party will have the right to inspect and copy the other party's materials prior to the hearing.³⁴

The Participants state that the parties to the hearing will consist of the applicant and a representative of the Company who shall present the reasons for the action taken by the Company

that allegedly aggrieved the applicant.³⁵ The applicant is entitled to be accompanied, represented and advised by counsel at all stages of the proceedings under the proposed rule changes.³⁶

The proposals further indicate that the Fee Review Subcommittee will determine all questions concerning the admissibility of evidence and will otherwise regulate the conduct of the hearing.³⁷ Each of the parties will be permitted, under the proposed rule changes, to make an opening statement, present witnesses and documentary evidence, cross examine opposing witnesses and present closing arguments orally or in writing as determined by the Fee Review Subcommittee.³⁸ In addition, the Fee Review Subcommittee will have the right to question all parties and witnesses to the proceeding.³⁹ The proposals require the Fee Review Subcommittee to keep a record of the hearing, to set forth its decision in writing, and to send the written decision to the parties to the proceeding.⁴⁰ Such decisions must contain the reasons supporting the conclusions of the Fee Review Subcommittee under the proposed rule changes.⁴¹

The Participants state that the decision of the Fee Review Subcommittee will be subject to review by the Operating Committee either on its own motion within 20 business days after issuance of the decision or upon written request submitted by the applicant within 15 business days after issuance of the decision.⁴² The applicant's petition for review must be in writing and must specify the findings and conclusions to which the applicant objects, together with the reasons for such objections.⁴³ According to the proposed rule changes, any objection to a decision not specified in writing will be considered to have been abandoned and may be disregarded.⁴⁴ The proposed rule changes allow parties to petition to submit a written argument to the Operating Committee and to request an opportunity to make an oral argument before the Operating

²⁴ Section 11.1(b) of the CAT NMS Plan. The Commission notes that the Participants filed proposed rule changes to adopt fees to be charged to Industry Members, including Industry Members that are Execution Venues. *See* Securities Exchange Act Release Nos. 80675 (May 15, 2017), 82 FR 23100 (May 19, 2017) (SR-MAX-2017-18); 80697 (May 16, 2017), 82 FR 23398 (May 22, 2017) (SR-BX-2017-023); 80692 (May 16, 2017), 82 FR 23325 (May 22, 2017) (SR-IEEX-2017-16); 80696 (May 16, 2017), 82 FR 23439 (May 22, 2017) (SR-NASDAQ-2017-046); 80693 (May 16, 2017), 82 FR 23363 (May 22, 2017) (SR-NYSE-2017-22); 80698 (May 16, 2017), 82 FR 23457 (May 22, 2017) (SR-NYSEArca-2017-52); 80694 (May 16, 2017), 82 FR 23416 (May 22, 2017) (SR-NYSEMKT-2017-26); 80721 (May 18, 2017), 82 FR 23864 (May 24, 2017) (SR-BOX-2017-16); 80713 (May 18, 2017), 82 FR 23956 (May 24, 2017) (SR-GEMX-2017-17); 80715 (May 18, 2017), 82 FR 23895 (May 24, 2017) (SR-ISE-2017-45); 80726 (May 18, 2017), 82 FR 23915 (May 24, 2017) (SR-MRX-2017-04); 80725 (May 18, 2017), 82 FR 23935 (May 24, 2017) (SR-PHLX-2017-37); 80785 (May 26, 2017), 82 FR 25404 (June 1, 2017) (SR-CBOE-2017-040); 80784 (May 26, 2017), 82 FR 25448 (June 1, 2017) (SR-BatsEDGA-2017-13); 80809 (May 30, 2017), 82 FR 25837 (June 5, 2017) (SR-BatsBYX-2017-11); 80822 (May 31, 2017), 82 FR 26148 (June 6, 2017) (SR-BatsBZX-2017-38); and 80821 (May 31, 2017), 82 FR 26177 (June 6, 2017) (SR-BatsEDGX-2017-22). On June 30, 2017, the Commission temporarily suspended the proposed rule changes and instituted proceedings to determine whether to approve or disapprove the proposed rule changes. *See* Securities Exchange Act Release No. 81067, 82 FR 31656 (July 7, 2017).

²⁵ 17 CFR 242.608.

²⁶ *See, e.g.,* Notice, *supra* note 12, at 28541–42. The Participants also represent that the Fee Dispute

Resolution Procedures were modeled after the adverse action procedures adopted by various exchanges and that such Procedures will be posted on the CAT NMS Plan Web site (www.catnmsplan.com). *See, e.g., id.* at 28542.

²⁷ *See, e.g., id.* at 28541.

²⁸ *See, e.g., id.* at 28542.

²⁹ *See, e.g., id.*

³⁰ *See, e.g., id.*

³¹ *See, e.g., id.* The Participants further indicate that the members of the Fee Review Subcommittee will be subject to the provisions of Section 4.3(d) of the CAT NMS Plan regarding recusal and Conflicts of Interest. *See, e.g., id.*

³² *See, e.g., id.*

³³ *See, e.g., id.*

³⁴ *See, e.g., id.*

³⁵ *See, e.g., id.*

³⁶ *See, e.g., id.*

³⁷ *See, e.g., id.* The proposed rule changes note, however, that the formal rules of evidence will not apply.

³⁸ *See, e.g., id.*

³⁹ *See, e.g., id.*

⁴⁰ *See, e.g., id.*

⁴¹ *See, e.g., id.*

⁴² *See, e.g., id.*

⁴³ *See, e.g., id.*

⁴⁴ *See, e.g., id.*

Committee.⁴⁵ The Operating Committee will then have sole discretion to grant or deny either request.⁴⁶

Under the proposed rule changes, any review conducted by the Operating Committee will be made upon the record and will be made after such further proceedings, if any, as the Operating Committee may order.⁴⁷ Based upon such record, the Operating Committee may affirm, reverse or modify, in whole or in part, the decision of the Fee Review Subcommittee.⁴⁸ The Participants state that the decision of the Operating Committee will be in writing, will be sent to the parties to the proceeding, and will be final.⁴⁹

A final decision regarding the disputed CAT Fees by the Operating Committee, or the Fee Review Subcommittee (if there is no review by the Operating Committee), must be provided within 90 days of the date on which the Industry Member filed a written application regarding disputed CAT Fees with the Company.⁵⁰ The proposed rule changes indicate, however, that the Operating Committee may extend the 90-day time limit at its discretion.⁵¹ The Fee Dispute Resolution Procedures also state that any time limits for the submission of answers, petitions or other materials may be extended by permission of the Operating Committee.⁵²

Finally, the Participants state that an Industry Member that files a written application with the Company disputing CAT Fees in accordance with the Fee Dispute Resolution Procedures is not required to pay such CAT Fees until the dispute is resolved in accordance with the Procedures, including any review by the Commission or in any other appropriate forum.⁵³ The Participants state that, if it is determined that the Industry Member owes any of the disputed CAT Fees, then the Industry Member must pay such disputed CAT Fees that are owed as well as interest on such disputed CAT Fees from the original due date until such disputed CAT Fees are paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the

maximum rate permitted by applicable law.⁵⁴

III. Discussion and Commission Findings

After carefully considering the proposed rule changes, the Commission finds that the proposals, as modified by the Amendments, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.⁵⁵ Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5)⁵⁶ of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Commission finds that the proposed rule changes are consistent with Section 6(b)(8)⁵⁷ of the Act, which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate.

The Commission believes that the proposals are consistent with Section 6(b)⁵⁸ of the Act in general, and furthers the objectives of Section 6(b)(5)⁵⁹ of the Act⁶⁰ in particular, because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing a uniform mechanism by which Industry Members may dispute CAT Fees and receive a timely review of such disputes. The Commission notes that the Fee Dispute Resolution Procedures provide for a hearing before the Fee Review Subcommittee, and if the Industry Member is not satisfied with the decision of the Fee Review Subcommittee, it may request a review of the decision by the Operating

Committee. Further, the proposals provide that, although the decisions of the Operating Committee or Fee Review Subcommittee are binding on an Industry Member, the Industry Member may seek redress from the Commission or in any other appropriate forum.

The Commission also notes that the proposals implement Section 11.5 of the CAT NMS Plan.⁶¹ Specifically, Section 11.5 states that the Participants will adopt rules requiring that disputes with respect to fees charged to Industry Members pursuant to Article XI of the CAT NMS Plan be determined by the Operating Committee or a designated Subcommittee. Section 11.5 further provides that such fee disputes will be determined by the Operating Committee or a designated Subcommittee, and that decisions on such matters will be binding on Industry Members without prejudice to the rights of any Industry Member to seek redress from the Commission pursuant to Rule 608 of Regulation NMS or in any other appropriate forum.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (SR-BatsBYX-2017-13; SR-BatsBZX-2017-39; SR-BatsEDGA-2017-14; SR-BatsEDGX-2017-24; SR-BOX-2017-19; SR-CBOE-2017-043; SR-IEX-2017-21; SR-ISE-2017-52; SR-MRX-2017-08; SR-MIAX-2017-24; SR-NASDAQ-2017-059; SR-BX-2017-029; SR-GEMX-2017-24; SR-PHLX-2017-47; SR-NYSE-2017-24; SR-NYSEArca-2017-60; SR-NYSEMKT-2017-31), as modified by the Amendments, are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶²

Eduardo A. Aleman,

Assistant Secretary.

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⁴⁵ See, e.g., *id.*

⁴⁶ See, e.g., *id.*

⁴⁷ See, e.g., *id.*

⁴⁸ See, e.g., *id.*

⁴⁹ See, e.g., *id.*

⁵⁰ See, e.g., *id.*

⁵¹ See, e.g., *id.*

⁵² See, e.g., *id.*

⁵³ See, e.g., *id.* The Participants clarify that the Industry Member may only withhold any invoiced CAT Fees that the Industry Member has disputed; under the proposed rule changes, the Industry Member must pay any invoiced CAT Fees that are not disputed when such fees are due, as set forth in the invoice. See, e.g., *id.*

⁵⁴ See, e.g., *id.* at 28542-43.

⁵⁵ In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁶ 15 U.S.C. 78f(b)(5).

⁵⁷ 15 U.S.C. 78f(b)(8).

⁵⁸ 15 U.S.C. 78f(b).

⁵⁹ 15 U.S.C. 78f(b)(5).

⁶⁰ 15 U.S.C. 78f(b)(5).

⁶¹ The Commission previously approved the CAT NMS Plan. See *supra* note 23.

⁶² 17 CFR 200.30-3(a)(12).