

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 29	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2016 - * 09	Amendment No. (req. for Amendments *)
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Filing by Bats EDGA 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"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<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 the Market Data section of it s fee schedule.

**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 <input type="text"/>

**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 \*)

Date 05/17/2016	Assistant General Counsel
By Chris Solgan	<input style="width: 100%;" type="text"/>
(Name *)	

csolgan@bats.com

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 \***

Add Remove View

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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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, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**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

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Bats EDGA Exchange, Inc. (“EDGA” or the “Exchange”) proposes to amend the Market Data section of its fee schedule to: (i) decrease the User fees for the EDGA Top and EDGA Last Sale feeds; and (ii) amend the New External Distributor Credit for the Bats One Feed.

The proposed changes to the fee schedule are attached as Exhibit 5 and are available on the Exchange’s website at [www.batstrading.com](http://www.batstrading.com), at the Exchange’s principal office and at the Public Reference Room of the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Exchange submits the proposed rule change pursuant to authority delegated by the Board of Directors of the Exchange on February 11, 2014. Exchange staff will advise the Exchange’s Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change and, therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

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

Eric Swanson  
Executive Vice President and  
General Counsel  
(913) 815-7000

Chris Solgan  
Assistant General Counsel  
(646) 856-8723

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

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

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

(a) Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to:

(i) decrease the User fees for the EDGA Top and EDGA Last Sale feeds; and (ii) amend the New External Distributor Credit for the Bats One Feed.

EDGA Top and Last Sale Fees

EDGA Top is a market data feed that includes top of book quotations and execution information for all equity securities traded on the Exchange.<sup>3</sup> EDGA Last Sale is a market data feed that includes last sale information for all equity securities traded on Exchange.<sup>4</sup> The Exchange proposes to decrease the User fees for the EDGA Top and EDGA Last Sale feeds.<sup>5</sup>

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<sup>3</sup> See Exchange Rule 13.8(c).

<sup>4</sup> See Exchange Rule 13.8(d).

<sup>5</sup> The Exchange notes that Bats BYX Exchange, Inc. ("BYX") and Bats EDGX Exchange, Inc. ("EDGX") also filed proposed rule changes with Commission to amend similar fees for their respective Top and Last Sale market data products. See File Nos. SR-BatsBYX-2016-08 and SR-BatsEDGX-2016-18. The Exchange represents that the proposed fees will continue to not cause the combined cost of subscribing to EDGX, EDGA, BYX, and Bats BZX Exchange Inc.'s ("BZX") individual Top and Last Sale feeds to be greater than those currently charged to subscribe to the Bats One Feed. See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) ("Initial Bats One Feed Fee Filings"). In these filings, the Exchange represented that the cost of subscribing to each of the underlying individual feeds necessary to create the Bats One Feed would not be greater than the cost of subscribing to the Bats One Feed. Id.

The Exchange does not currently charge an External Distributor<sup>6</sup> of EDGA Last Sale or EDGA Top a Distributor fee. The Exchange does, however, charge those who receive either EDGA Top or EDGA Last Sale from External Distributors different fees for both their Professional<sup>7</sup> and Non-Professional<sup>8</sup> Users. The Exchange currently assesses a monthly fee for Professional Users of \$2.00 per User. Non-Professional Users are assessed a monthly fee of \$0.05 per User. The Exchange now proposes to decrease the Professional User fee to \$1.00 per User per month and the Non-Professional User fee to \$0.025 per User per month.

#### Bats One Feed

In sum, the Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on EDGA and its affiliated exchanges and for which the Bats Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan. The Bats

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<sup>6</sup> An “External Distributor” of an Exchange Market Data product is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.” See the Exchange Fee Schedule available at [http://batstrading.com/support/fee\\_schedule/edga/](http://batstrading.com/support/fee_schedule/edga/).

<sup>7</sup> A “Professional User” is defined as “any User other than a Non-Professional User.” See the Exchange Fee Schedule available at [http://batstrading.com/support/fee\\_schedule/edga/](http://batstrading.com/support/fee_schedule/edga/).

<sup>8</sup> A “Non-Professional User” is defined as “a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.” *Id.*

One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the “Bats One Summary Feed”). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels (“Bats One Premium Feed”).<sup>9</sup>

The Exchange charges External Distributors of the Bats One Summary Feed a monthly Distribution fee of \$5,000. The Exchange also offers a New External Distributor Credit under which new External Distributors of the Bats One Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the Bats One Summary Feed. The Exchange now proposes to decrease the time a new External Distributor of the Bats One Feed will not be charged a Distributor Fee from their first three (3) months to their first one (1) month.<sup>10</sup>

#### Implementation Date

The Exchange proposes to implement the proposed changes to its fee schedule on June 1, 2016.

#### (b) Statutory Basis

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

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<sup>9</sup> See Exchange Rule 13.8(b). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) (“Bats One Approval Order”).

<sup>10</sup> The Exchange notes that new External Distributor Credit will continue to be available for three (3) months to those Distributors who began to distribute the Bats One Summary Feed prior to June 1, 2016.

objectives of Section 6 of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>12</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 recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act<sup>13</sup> in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,<sup>14</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the

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<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78k-1.

<sup>14</sup> See 17 CFR 242.603.

amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. EDGA Last Sale, EDGA Top and the Bats One Feed are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. The Exchange also believes the proposed decrease to the External Distribution fees for EDGA Last Sale and EDGA Top are reasonable and equitable in light of the continued benefits to data recipients. To the extent consumers do purchase the data products, the revenue generated will continue to offset the Exchange's fixed costs of operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. It will also help the Exchange to continue to cover its costs in developing and running that platform, as well as ongoing infrastructure costs. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data feeds. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to EDGA Top, EDGA Last Sale, and the Bats

One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives because the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute EDGA Top, EDGA Last Sale, or the Bats One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the EDGA Top, EDGA Last Sale, or the Bats One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.<sup>15</sup>

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<sup>15</sup> The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate

The Exchange believes the proposed Professional and Non-Professional User fees for EDGA Top and EDGA Last Sale are equitable and reasonable because they will continue to result in greater availability to Professional and Non-Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE. Specifically, NYSE offers NYSE BBO, which includes best bid and offer for NYSE traded securities, for a monthly fee of \$4.00 per professional subscriber and \$0.20 per non-professional subscriber.<sup>16</sup> NYSE also offers NYSE Trades, which is a data feed that provides the last sale information for NYSE traded securities, for the same price as NYSE BBO. The Exchange's proposed per User Fees for EDGA Top and EDGA Last Sale are less than the NYSE's fees for NYSE Trades and NYSE BBO.

The Exchange also believes that amending the New External Distributor Credit for the Bats One Feed is equitable and reasonable. The Exchange notes that the New External Distributor Credit was initially adopted at the time the Exchange began to offer the Bats One Summary Feed to subscribers. It was intended to incentivize new Distributors to enlist Users to subscribe to the Bats One Summary Feed in an effort to broaden the product's distribution. The Exchange also believes that decreasing the time during which the New External Distributor Credit is available from three (3) to one (1) month for the Bats One Feed is equitable and reasonable because the credit has been

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Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

<sup>16</sup> See NYSE Market Data Pricing dated March 2016 available at <http://www.nyxdata.com/>.

available to Distributors since January 2015 providing new Distributors with ample time to grow their subscriber bases during the available three (3) month period. Decreasing the credit period to one (1) month is equitable and reasonable as it would continue to provide new Distributors ample time to grow their subscriber bases.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGA Last Sale, EDGA Top, and the Bats One Feed are constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data. This competitive pressure is evidenced by the Exchange's proposal to decrease fees as described herein.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGA Last Sale, EDGA Top, and the Bats One Feed compete with a number of alternative products. For instance, EDGA Last Sale, EDGA Top, and the Bats

One Feed do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks (“ECN”) that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGA last sale prices and top-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on the Exchange’s data products and the Exchange’s compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGA Last Sale, EDGA Top, and the Bats One Feed, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these

alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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)

(a) This proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act.

(b) This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>17</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>18</sup>

(c) Inapplicable.

(d) Inapplicable.

8. Proposed Rule Change Based on Rules 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.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

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

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BatsEDGA-2016-09)

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Change to the Market Data Section of its Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, Bats EDGA Exchange, Inc. (the “Exchange” or “EDGA”) 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 Market Data section of its fee schedule to: (i) decrease the User fees for the EDGA Top and EDGA Last Sale feeds; and (ii) amend the New External Distributor Credit for the Bats One Feed.

The text of the proposed rule change is available at the Exchange’s website at

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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).

[www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to:

(i) decrease the User fees for the EDGA Top and EDGA Last Sale feeds; and (ii) amend the New External Distributor Credit for the Bats One Feed.

EDGA Top and Last Sale Fees

EDGA Top is a market data feed that includes top of book quotations and execution information for all equity securities traded on the Exchange.<sup>5</sup> EDGA Last Sale is a market data feed that includes last sale information for all equity securities traded on Exchange.<sup>6</sup> The Exchange proposes to decrease the User fees for the EDGA Top and EDGA Last Sale feeds.<sup>7</sup>

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<sup>5</sup> See Exchange Rule 13.8(c).

<sup>6</sup> See Exchange Rule 13.8(d).

<sup>7</sup> The Exchange notes that Bats BYX Exchange, Inc. ("BYX") and Bats EDGX Exchange, Inc. ("EDGX") also filed proposed rule changes with Commission to

The Exchange does not currently charge an External Distributor<sup>8</sup> of EDGA Last Sale or EDGA Top a Distributor fee. The Exchange does, however, charge those who receive either EDGA Top or EDGA Last Sale from External Distributors different fees for both their Professional<sup>9</sup> and Non-Professional<sup>10</sup> Users. The Exchange currently assesses a monthly fee for Professional Users of \$2.00 per User. Non-Professional Users

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amend similar fees for their respective Top and Last Sale market data products. See File Nos. SR-BatsBYX-2016-08 and SR-BatsEDGX-2016-18. The Exchange represents that the proposed fees will continue to not cause the combined cost of subscribing to EDGX, EDGA, BYX, and Bats BZX Exchange Inc.'s ("BZX") individual Top and Last Sale feeds to be greater than those currently charged to subscribe to the Bats One Feed. See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) ("Initial Bats One Feed Fee Filings"). In these filings, the Exchange represented that the cost of subscribing to each of the underlying individual feeds necessary to create the Bats One Feed would not be greater than the cost of subscribing to the Bats One Feed. Id.

<sup>8</sup> An "External Distributor" of an Exchange Market Data product is defined as "a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity." See the Exchange Fee Schedule available at [http://batstrading.com/support/fee\\_schedule/edga/](http://batstrading.com/support/fee_schedule/edga/).

<sup>9</sup> A "Professional User" is defined as "any User other than a Non-Professional User." See the Exchange Fee Schedule available at [http://batstrading.com/support/fee\\_schedule/edga/](http://batstrading.com/support/fee_schedule/edga/).

<sup>10</sup> A "Non-Professional User" is defined as "a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt." Id.

are assessed a monthly fee of \$0.05 per User. The Exchange now proposes to decrease the Professional User fee to \$1.00 per User per month and the Non-Professional User fee to \$0.025 per User per month.

### Bats One Feed

In sum, the Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on EDGA and its affiliated exchanges and for which the Bats Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the “Bats One Summary Feed”). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels (“Bats One Premium Feed”).<sup>11</sup>

The Exchange charges External Distributors of the Bats One Summary Feed a monthly Distribution fee of \$5,000. The Exchange also offers a New External Distributor Credit under which new External Distributors of the Bats One Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the Bats One Summary Feed. The Exchange now proposes to decrease the time a new External Distributor of the Bats One Feed will not be charged a

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<sup>11</sup> See Exchange Rule 13.8(b). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) (“Bats One Approval Order”).

Distributor Fee from their first three (3) months to their first one (1) month.<sup>12</sup>

Implementation Date

The Exchange proposes to implement the proposed changes to its fee schedule on June 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>14</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 recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act<sup>15</sup> in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than

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<sup>12</sup> The Exchange notes that New External Distributor Credit will continue to be available for three (3) months to those Distributors who began to distribute the Bats One Summary Feed prior to June 1, 2016.

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 15 U.S.C. 78k-1.

exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,<sup>16</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. EDGA Last Sale, EDGA Top and the Bats One Feed are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. The Exchange also believes the proposed decrease to the External Distribution fees for EDGA Last Sale and EDGA Top are reasonable and equitable in light of the continued benefits to data recipients. To the extent consumers do purchase the data products, the revenue generated will continue to offset the Exchange's fixed costs of operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. It will also help the

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<sup>16</sup> See 17 CFR 242.603.

Exchange to continue to cover its costs in developing and running that platform, as well as ongoing infrastructure costs. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data feeds. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to EDGA Top, EDGA Last Sale, and the Bats One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives because the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute EDGA Top, EDGA Last Sale, or the Bats One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the EDGA Top, EDGA Last Sale, or the Bats One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.<sup>17</sup>

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<sup>17</sup> The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the

The Exchange believes the proposed Professional and Non-Professional User fees for EDGA Top and EDGA Last Sale are equitable and reasonable because they will continue to result in greater availability to Professional and Non-Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE. Specifically, NYSE offers NYSE BBO, which includes best bid and offer for NYSE traded securities, for a monthly fee of \$4.00 per professional subscriber and \$0.20 per non-professional subscriber.<sup>18</sup> NYSE also offers NYSE Trades, which is a data feed that provides the last sale information for NYSE traded securities, for

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Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

<sup>18</sup> See NYSE Market Data Pricing dated March 2016 available at <http://www.nyxdata.com/>.

the same price as NYSE BBO. The Exchange's proposed per User Fees for EDGA Top and EDGA Last Sale are less than the NYSE's fees for NYSE Trades and NYSE BBO.

The Exchange also believes that amending the New External Distributor Credit for the Bats One Feed is equitable and reasonable. The Exchange notes that the New External Distributor Credit was initially adopted at the time the Exchange began to offer the Bats One Summary Feed to subscribers. It was intended to incentivize new Distributors to enlist Users to subscribe to the Bats One Summary Feed in an effort to broaden the product's distribution. The Exchange also believes that decreasing the time during which the New External Distributor Credit is available from three (3) to one (1) month for the Bats One Feed is equitable and reasonable because the credit has been available to Distributors since January 2015 providing new Distributors with ample time to grow their subscriber bases during the available three (3) month period. Decreasing the credit period to one (1) month is equitable and reasonable as it would continue to provide new Distributors ample time to grow their subscriber bases.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGA Last Sale, EDGA Top, and the Bats One Feed are constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data. This competitive pressure is evidenced by the Exchange's

proposal to decrease fees as described herein.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGA Last Sale, EDGA Top, and the Bats One Feed compete with a number of alternative products. For instance, EDGA Last Sale, EDGA Top, and the Bats One Feed do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGA last sale prices and top-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on the Exchange's data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its

overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGA Last Sale, EDGA Top, and the Bats One Feed, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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.<sup>20</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily

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

<sup>20</sup> 17 CFR 240.19b-4(f).

suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BatsEDGA-2016-09 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-BatsEDGA-2016-09. 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-BatsEDGA-2016-09 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.<sup>21</sup>

Robert W. Errett  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

**Bats EDGA Exchange Fee Schedule**

Effective [May 6]June 1, 2016

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**Market Data Fees:**

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**EDGA Top:**

**Internal Distribution**

(No change).

**External Distribution**

<b>Distribution Fee</b>	(No change).
<b>Professional User Fee</b>	\$( <u>2</u> ) <u>1</u> .00/month
<b>Non-Professional User Fee</b>	\$0. <u>025</u> /month
<b>Enterprise Fee*</b>	(No change).
<b>Digital Media Enterprise Fee**</b>	(No change).

\* \* \* \* \*

**EDGA Last Sale:**

**Internal Distribution**

(No change).

**External Distribution**

<b>Distribution Fee</b>	(No change).
<b>Professional User Fee</b>	\$( <u>2</u> ) <u>1</u> .00/month

<b>Non-Professional User Fee</b>	\$0.0 <u>2</u> 5/month
<b>Enterprise Fee*</b>	(No change).
<b>Digital Media Enterprise Fee**</b>	(No change).

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**Bats One Feed<sup>sm</sup> :**

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\* New External Distributor Credit. New External Distributors of the Bats One Summary Feed will not be charged an External Distributor Fee for their first one (1) [three (3)] month[s] in order to allow them to enlist new Users to receive the Bats One Summary Feed.

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