

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77182; File No. SR-BATS-2016-08)

February 19, 2016

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rules 8.15, Imposition of Fines for Minor Violation(s) of Rules, and 25.3, Penalty for Minor Rule Violations, to Amend the Minor Rule Violation Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 10, 2016, BATS Exchange, Inc. (“BZX” or the “Exchange”) 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 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 Rules 8.15 and 25.3 to amend the Exchange’s Minor Rule Violation Plan. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>3</sup>

The text of the proposed rule change is available at the Exchange’s website at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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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> 17 CFR 240.19b-4(f)(6)(iii).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 8.15 applicable to the Exchange’s equity platform (“BZX Equities”) to remove the \$2,500 penalty limitation contained in Rule 8.15(a) in order to modify the permissible penalties for minor rule violations with respect to Rule 25.3 applicable to the BZX options platform (“BZX Options”) and to allow the Exchange the discretion to impose penalties in excess of \$2,500 under both the BZX Equities and BZX Options Minor Rule Violation Plans. The proposal further provides that only fines that do not exceed \$2,500 will not be reported. Fines that exceed \$2,500 will continue to be publicly reported by the Exchange<sup>4</sup> and reported as final in compliance with SEC Rule 19d-1(c).<sup>5</sup>

Further, the Exchange proposes to amend the BZX Options Minor Rule Violation Plan penalty schedule contained in Rule 25.3(d) – for violations of Rule 22.6(d) regarding Market Makers maintaining continuous bids and offers – to aggregate violations of Rule 22.6(d) that occur in a single month of a rolling 24-month period and sanction such aggregated violations as a single offense. The

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<sup>4</sup> As set forth in Interpretation and Policy .01 to Rule 8.11, except as provided in Rule 8.15(a), the staff shall cause details regarding all formal disciplinary actions where a final decision has been issued to be published on a website maintained by the Exchange.

<sup>5</sup> 17 CFR 240.19d-1(c).

proposed amended penalty schedule is substantially similar to International Securities Exchange (“ISE”) Rule 1614(d)(11) Minor Rule Violation Plan penalties for continuous options quotation violations.

#### *Removal of Penalty Limitation*

Rule 25.3 states that the Exchange may proceed under the Minor Rule Violation Plan pursuant to the procedures set forth in Rule 8.15 applicable to BZX Equities. Currently, Rule 8.15(a) states that the Exchange may impose a fine “not to exceed \$2,500” for a minor rule violation. Because existing Rule 25.3 recommends the imposition of penalties in excess of \$2,500 in certain circumstances, the Exchange believes the penalty limitation in 8.15(a) is obsolete, inappropriate, and unnecessarily confusing. Moreover, abiding by the terms of the penalty limitation contained in 8.15(a) for purposes of the BZX Options Minor Rule Violation Plan deprives Rule 25.3 of much of its meaning and effectiveness. Further, it is the Exchange’s position that the penalty limitation currently contained in Rule 8.15(a) is also unnecessary because the Exchange must exercise its discretion to opt to proceed under the Minor Rule Violation Plan rather than under its default process, the formal disciplinary process. As a practical matter, if an individual or entity exceeds the prescribed Minor Rule Violation Plan fine threshold of \$2,500, it will oftentimes be appropriate for the Exchange to decline to exercise its discretion to proceed under the Minor Rule Violation Plan and to instead proceed under the formal disciplinary process. The Exchange, however, believes it should have the discretion to elect to proceed under the Minor Rule Violation Plan for a minor rule violation that would otherwise cumulatively exceed \$2,500. Accordingly, the Exchange proposes to eliminate the penalty limitation in Rule 8.15(a).

The Exchange recognizes, however, a fine exceeding \$2,500 must be reported as final in accordance with SEC Rule 19d-1(c),<sup>6</sup> regardless of whether or not it is imposed under the Minor

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<sup>6</sup> 17 CFR 240.19d-1(c).

Rule Violation Plan. The Exchange provides, therefore, that only fines that do not exceed \$2,500 will not be reported. Fines that exceed \$2,500 will continue to be reported as final in compliance with SEC Rule 19d-1(c).<sup>7</sup>

*Amendment to MRVP for Continuous Quoting Violations*

The Exchange proposes to amend Rule 25.3(d) to impose fines for violations of Rule 22.6(d) – regarding a Market Maker’s failure to maintain continuous bids and offers – under the Minor Rule Violation Plan by aggregating the violations that occur in a month and sanctioning the violations as a single offense. The Exchange proposes to continue its current recommendation of issuing a letter of caution for the first offense in a rolling 24-month period. For the second violation in the period, the Exchange proposes to issue a \$1,000 penalty; for the third a \$2,500 penalty; for the fourth a \$5,000 penalty. Finally, if there occurs a fifth violation within a rolling 24-month period, the Exchange believes that such a violation is inappropriate for disposition under the Minor Rule Violation Plan, and the proposed amendment to Rule 25.3(d) directs that the violation be enforced in a formal disciplinary action. The Exchange believes it is appropriate to recommend higher penalties than recommended in current Rule 25.3(d) because the Exchange is aggregating violations that occur in a month and sanctioning the violations as a single offense.

As with other violations covered under the Exchange’s Minor Rule Violation Plan, the Exchange may elect to forgo the Minor Rule Violation Plan and enforce any egregious violations of its rules under the Exchange’s formal disciplinary process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in

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<sup>7</sup> Id.

particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires exchange rules to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>10</sup> which requires that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act such that it can enforce compliance with the Act by persons registered with the Exchange. The Exchange also believes the proposed rule change furthers the objectives of Section 6(b)(6)<sup>11</sup> of the Act, which requires that the rules of an exchange provide that its members and persons associated with its members be appropriately disciplined for violation of the provisions of the Act, the rules and regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. Finally, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,<sup>12</sup> in particular, in that it provides fair procedures for the disciplining of members and persons associated with members.

The Exchange believes the proposed rule change for Rule 8.15(a) fulfills the requirements set forth above because it modifies the procedures for the Exchange to discipline minor BZX Options rule violations by removing the \$2,500 penalty limitation from the BZX Equities and BZX Options Minor Rule Violation Plan. The proposed rule change further provides that the Exchange will not

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(1).

<sup>11</sup> 15 U.S.C. 78f(b)(6).

<sup>12</sup> 15 U.S.C. 78f(b)(7).

report fines that do not exceed \$2,500 under the Minor Rule Violation Plan except as required under SEC Rule 19d-1(c).<sup>13</sup>

The Exchange believes the proposed rule change for Rule 25.3(d) fulfills the requirements set forth above because it permits the Exchange to levy progressively larger fines against a repeat-offender and prescribes that after five violations in a rolling 24-month period, the conduct is outside the purview of the Minor Rule Violation Plan, and formal disciplinary action is appropriate. Further, the Exchange believes the proposed rule change for Rule 25.3(d) fulfills the requirements set forth above because it clearly defines when and how a Market Maker may be disciplined under the Minor Rule Violation Plan. The Exchange also notes that the proposed rule change for Rule 25.3(d) is based on and substantially similar to ISE Rule 1614(d)(11).

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

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act<sup>14</sup> in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change merely amends the procedures the Exchange intends to follow with regard to minor BZX Options Rule 22.6(d) violations and removes an obsolete and unnecessary penalty limitation. Thus, the Exchange does not believe the proposed rule change will have any effect on competition.

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

The Exchange has 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

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<sup>13</sup> 17 CFR 240.19d-1(c).

<sup>14</sup> 15 U.S.C. 78f(b)(8).

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>16</sup> the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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

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

<sup>16</sup> 17 CFR 240.19b-4.

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2016-08 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BATS-2016-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-BATS-2016-08, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Brent J. Fields  
Secretary

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