



September 9, 2016

VIA E-MAIL

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C., 20549-1090

Re: SR-BatsBYX-2016-17, SR-BatsBZX-2016-29, SR-BatsEDGA-2016-15, SR-BatsEDGX-2016-26, SR-NYSE-2016-63, SR-NYSEArca-2016-123, SR-NYSEMKT-2016-84, SR-NASDAQ-2016-126, SR-Phlx-2016-92, SR-BX-2016-050

Dear Mr. Fields:

Bats BYX Exchange, Inc. ("BYX"), Bats BZX Exchange, Inc. ("BZX"), Bats EDGA Exchange, Inc. ("EDGA"), Bats EDGX Exchange, Inc. ("EDGX"), New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC ("NYSE MKT"), NYSE Arca, Inc. ("NYSE Arca"), The Nasdaq Stock Market LLC ("Nasdaq"), NASDAQ PHLX LLC ("Phlx"), and NASDAQ BX, Inc. ("BX") (together the "Exchanges") appreciate the opportunity to submit a comment letter in connection with exchange proposals to modify their quoting and trading behavior as required by the Plan to Implement a Tick Size Pilot Program (the "Plan").¹

The Exchanges are commenting on the above-referenced proposed rule changes by BYX, BZX, EDGA, and EDGX (collectively, "Bats' Proposals"), as amended, and recently approved by the Securities and Exchange Commission ("Commission").² This comment letter is also in support of proposed rule changes filed by NYSE, NYSE Arca, and NYSE MKT (collectively, "NYSE

¹ Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Tick Plan Approval Order"). The pilot includes stocks of small capitalization companies, defined as those with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day ("Pilot Securities").

² See Securities Exchange Act Release Nos. 78333 (July 14, 2016), 81 FR 47198 (July 20, 2016) (SR-BatsBYX-2016-17); 78334 (July 14, 2016), 81 FR 47187 (July 20, 2016) (SR-BatsBZX-2016-29); 78330 (July 14, 2016), 81 FR 47223 (July 20, 2016) (SR-BatsEDGA-2016-15); and 78331 (July 14, 2016), 81 FR 47205 (July 20, 2016) (SR-BatsEDGX-2016-26) (the original Bats' Proposals); and Securities Exchange Act Release No. 78765 (Sept. 2, 2016), 81 FR 62195 (September 8, 2016) (SR-BatsBZX-2016-29) (Accelerated approval Order of Bats' Proposals, as amended) ("Bats' Approval Order").

Proposals), and by Nasdaq, Phlx, and BX (collectively, "Nasdaq Proposals").³ Specifically, the Exchanges are concerned that the lack of specificity at such late date of the requirements being requested by the Commission in connection with exchange proposals to change their quoting and trading rules in response to the Plan imperils the integrity of the industry-wide testing events scheduled for September 10, 2016 and September 17, 2016.⁴ During those tests, market participants will have an opportunity to test the changes that exchanges are making in response to the Plan, as described in the NYSE and Nasdaq Proposals.⁵

If the NYSE and Nasdaq exchanges are permitted to proceed with the order type behavior changes as described in NYSE and Nasdaq Proposals, they will be able to meet the October 3, 2016 implementation date. There is simply insufficient time for the NYSE and Nasdaq exchanges to make changes to systems prior to October 3, 2016. Moreover, the Exchanges believe that it would impose an undue burden on competition because similar requirements are not being required of any other trading centers, including ATs and broker-dealer internalizers.⁶ This burden on competition is heightened by the fact that, in contrast to trading centers that are not Plan Participants, the changes proposed by the Exchanges in connection with the Plan are subject to Commission review and approval pursuant to Section 19 of the Securities Exchange Act of 1934 ("Act").⁷

Background

The Plan requires the creation of three Test Groups that will be analyzed in conjunction with a Control Group to test the effects of wider quoting and trading increments on liquidity and pre-trade transparency in smaller-capitalized securities. For the 400 Pilot Securities in Test Group One, exchanges and broker-dealers may only quote in increments of \$0.05, but trading increments are unchanged. For the 400 Pilot Securities in Test Group Two, exchanges and broker-dealers may only quote and trade in increments of \$0.05, unless the trade qualifies as an allowable exception, such as a midpoint trade, a retail order, or a negotiated trade. For the 400 Pilot Securities in Test Group Three, the same quoting and trading requirements and exceptions as Test Group Two apply. However, Test Group Three includes an additional requirement that prohibits price matching by a market participant that is not displaying at a price of a Trading Center's best protected bid or offer, subject to an additional exceptions, such as for Block Size Orders ("Trade-at requirement"). The remaining approximately 1,200 Pilot Securities will be in a

³ See SR-NYSE-2016-63; SR-NYSEArca-2016-124; SR-NYSEMKT-2016-84; SR-NASDAQ-2016-126; SR-Phlx-2016-92; and SR-BX-2016-050.

⁴ For example, the amendments to the Bats' Proposals reflect recent staff guidance on changes that exchanges must make to their rules, but we understand that this position is changing.

⁵ Bats will be testing order behavior as described in the Bats Approval Order.

⁶ The Exchanges understand that trading centers that are not registered exchanges will modify order behavior for Pilot Securities in Test Group Three, including not offering order types or changing trading behavior that would not be applied to Pilot Securities in the Control Group or Test Groups One and Two. A trading center that is not a Plan Participant may therefore realize a competitive advantage because the Exchanges would have to submit a rule filing to make such a change that would have to be approved by the Commission.

⁷ See 15 U.S.C. 78s(b)(1).

Control Group.

As the Commission noted in the Tick Plan Approval Order, the Plan is reasonably designed to provide measurable data that should facilitate the ability of the Commission, the public, and market participants to review and analyze the effect of tick size on the trading, liquidity, and market quality of securities of smaller capitalization companies.⁸ The Plan thus provides a mechanism for a data-driven approach to evaluate whether certain changes to market structure for Pilot Securities would be consistent with the Commission's mission to protect investors, maintain fair and orderly and efficient markets, and facilitate capital formation.⁹ Market participants, including exchanges and other trading centers, are modifying their rules, order types, and execution algorithms in response to the different requirements applicable to the Control Group and each Test Group under the Plan.

Rule Changes in Response to the Pilot

The Exchanges understood, from discussions with Commission staff in connection with their respective proposed rule changes related to the Plan, that exchanges would be permitted to make changes to their order types in response to the Plan only if those changes apply the same logic to orders in all Pilot Securities. Specifically, the staff's interpretation would permit an exchange to eliminate an order type in a particular Test Group, such as Test Group Three, only if it were *impossible* to execute such an order in that Test Group. This impossibility standard could be met only if an exchange's order type incorporates all available exceptions to restrictions on quoting or trading in each Trade Group. For this reason, the Bats exchanges amended their filings to eliminate the availability of Supplemental Peg Orders and Market Peg Orders in all Pilot Securities. We were recently told that the staff's view now is that exchanges can choose not to make all exceptions to the Trade-at requirement available.

However, we still lack clarity regarding the changes that the staff would consider appropriate for exchanges to make in response to the Pilot. We understand that the SEC staff's concerns are motivated by ensuring the integrity of the data collected during the Pilot.¹⁰ We agree that a goal of the Pilot is to support a data-driven analysis of the impact of the three Test Groups on trading. However, inherent in any such analysis should be a review of the *real-world* trading behavior that would change in response to the differences among the test groups. In addition, to require that an exchange modify an order type so that it would be consistently applied across the Test Groups would effectively negate the structural differences in the Test Groups that the Pilot is designed to test, and would therefore negatively impact the resulting Pilot data.

We also believe that requiring exchanges to uniformly apply changes to all Pilot Securities may impact the data integrity of the Pilot as it relates to other trading centers that are not Plan Participants. Trading centers that are not Plan Participants have no restrictions on how they

⁸ See Tick Plan Approval Order, supra note 1, at 27529.

⁹ Id.

¹⁰ As the Commission noted in the Bats Approval Order, the concern is that if proposed rule changes are not necessary for compliance with the Plan and would have a disparate impact on different Test Groups and the Control Group, it would bias the results of the Pilot and undermine the value of the data generated in informing future policy decisions.

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change trading behavior and which order types they will make available for Pilot Securities, despite the fact that these trading centers are also required to adhere to the Plan's quoting and trading requirements and to submit Pilot data to the Commission. The data collected from trading by non-Plan Participant trading centers that decide to modify their systems to logically respond to the different requirements of the various Test Groups will not be subject to the constraints of these new interpretations. Any data collected under such circumstances would therefore not reflect market responses to the new rules in each Test Group, but rather would reflect the fact that a large portion of market participants (Exchanges) would be constrained in a new and novel way.

Again, we believe that the evolving interpretation of how an exchange must comply with the Plan at this late date jeopardizes not only the integrity of the scheduled industry-wide test dates, but also the ability of the NYSE and Nasdaq exchanges to meet the October 3, 2016 implementation date. Moreover, requiring exchanges to make changes to how they propose to modify behavior for Pilot Securities would impose an undue burden on competition because broker-dealers and ATSS would not be subject to the same requirements.

Consequently, we ask the Commission to approve the NYSE and Nasdaq Proposals as filed.

Sincerely,



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