



17 State Street, 38<sup>th</sup> floor New York, NY 10004

June 12, 2017

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

*Re: File No. SR-BatsBZX-2017-34*

Dear Mr. Fields:

The Clearpool Group (“Clearpool”)<sup>1</sup> is writing to provide its views on the above referenced filing by the Bats BZX Exchange (“Bats”) to introduce the Bats Market Close, a closing match process for non-BZX Listed Securities.

As an independent agency broker-dealer, and provider of tools to assist other broker-dealers in routing, execution, pre- and post-trade compliance and risk monitoring, Clearpool has a significant interest in ensuring that the U.S. markets are the most orderly, efficient and competitive markets possible.

Consistent with this goal, Clearpool supports the Bats proposal. We believe that the Bats Market Close will introduce much needed competition to the markets and is another step in addressing issues raised by the fees charged by exchanges for the various products and services provided to market participants.

As we stated in a previous letter to the SEC related to market data fees,<sup>2</sup> the time is ripe for exchanges to price their offerings more competitively and equitably for all market participants. The impact of these costs on smaller and mid-size brokers, such as Clearpool and the core constituency which we serve, can be disproportionate and can have a wide ranging impact on not only these brokers, but also the investors who they serve.

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<sup>1</sup> Launched in 2014 and based in New York, Clearpool Group offers advanced electronic trading software and provides independent agency broker-dealer execution services. Clearpool’s algorithmic and execution management systems allow market participants to take control of better quality execution by delivering advanced electronic trading solutions for an evolving equity market microstructure and competitive landscape. For further information on the Clearpool Group, see [www.clearpoolgroup.com](http://www.clearpoolgroup.com).

<sup>2</sup> See Letter from Joe Wald, Chief Executive Officer, Clearpool, to Brent J. Fields, Secretary, SEC (File No. SR-NYSE-2016-45; File No. SR-NYSEMKT-2016-63; and File No. SR-NYSEArca-2016-89), dated December 16, 2016. The letter can be found at <https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-1430031-10.pdf>.

## **The Proposal Would Increase Competition and Reduce Fees for Market Participants**

As the proposal recognizes, the current closing auction process is operated as a monopoly by, and is a significant source of revenue for, the exchanges. Given that the official closing price for a listed security is generally determined by the closing auction for that security held at the primary listing market, market participants desiring to transact at the official closing price must participate in the listing market's closing auction to receive the official closing price. Clearpool supports Bats' stated goal of the proposal - to provide transaction fee competition to this process.

While the industry has seen the benefits of competition when exchanges are forced to compete in the form of reduced intraday exchange trading fees, these benefits have not yet translated to the fees associated with the closing auction. As Bats notes, in the past five years, closing auction fees have increased between 16 percent and 60 percent at the NYSE and Nasdaq respectively. At the same time, volume executed in those auctions has increased over 70 percent, from 200 million shares per day in 2012 to almost 350 million shares in 2016.<sup>3</sup> According to the NYSE, the NYSE closing auction alone represents 5.8 percent of average daily volume in NYSE listed stocks, a significant part of the overall trading volume.<sup>4</sup>

The exchanges have taken advantage of this increased volume, at the expense of market participants, by charging higher fees for participation in their closing auctions than for trading conducted intraday. To compound matters, both the NYSE and Nasdaq assess a fee on both sides of the transactions that occur in their closing auctions and the imbalance feeds that are published for their auctions is information that is only available as part of the exchanges' premium data products. Therefore, as volume executed in the primary listing markets' closing auctions has increased, a disproportionate increase in fees has occurred and the close is now subsidizing the revenues received by exchanges from other trading fees. In fact, when competition has been introduced into continuous trading fees, we have seen price compression to the point where exchanges will actually opt to lose money in order not to diminish its market share.<sup>5</sup> So for the majority of trading performed during the day, exchanges are competing and prices for market participants have been reduced; closing auctions has become an outlier.

Given that exchanges have been able to operate with minimal competition in the close, the incentives for exchanges to place their interests ahead of market participants has increased, as does the disincentives to reign in such fees. We find it debatable that the NYSE, in its initial thoughts on the Bats proposal, emphasizes that its closing auctions are inexpensive for customers and provides

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<sup>3</sup> See Bats Press Release, "Bats Announces Alternative to Closing Auctions," dated May 8, 2017 [http://cdn.batstrading.com/resources/press\\_releases/Bats-Market-Close-FINAL.pdf](http://cdn.batstrading.com/resources/press_releases/Bats-Market-Close-FINAL.pdf).

<sup>4</sup> Note from Stacey Cunningham, Chief Operating Officer, New York Stock Exchange, to NYSE Trading Community re: Bats Market Close proposal.

<sup>5</sup> For example, the Tier 3 rate that the NYSE charges for Supplemental Liquidity Providers (SLPs) generates a rebate of .0029 while the NYSE take fee is .00275; NYSE loses .00015 each time this transaction occurs. Similarly, the NYSE Arca Tier 1 offers a rebate of .0031 for Tapes A and C while their take fee is .0030; NYSE Arca loses .0001 each time in this case.

examples of the average closing auction fees paid by market participants. What is not emphasized is the fact that closing auction costs are significantly higher when compared to continuous trading fees.<sup>6</sup>

Bats has stated that it intends to price Bats Market Close executions aggressively at a discount to the primary market auction fees. While we support the Bats proposal, and the resultant decrease in fees for market participants, we urge Bats to keep its fees at the proposed level. Similarly, if the Bats Market Close is successful, and Bats increases its market share vis-à-vis the other exchanges, their market data will become more valuable. We believe that Bats should not further monetize this product to the detriment of market participants through, for example, increasing fees associated with their proprietary data and connectivity services once the proposal is approved. At the end of the day, competition is significant only if it is real.

### **The Proposal Would Not Impede Price Discovery**

Concerns have been expressed about the proposal's impact on the price discovery function performed by the primary listing market's closing auctions. Clearpool believes that price discovery is an important part of an efficient securities market. We do not believe, however, that the proposal would meaningfully impact price discovery to the detriment of the markets.

Significantly, the Bats Market Close would only execute paired MOC orders, orders that do not directly impact prices (as opposed to Limit-On-Close orders). In addition, as Bats notes, while the proposal may reduce the number of market orders pooled together at the primary listing markets, Bats will publish the size of the paired off flow from the Bats Market Close in advance of the primary market's cutoff time. In this manner, market participants will have available information they need to make further order execution decisions.<sup>7</sup>

We also agree that the proposal can be differentiated from other exchange initiatives, specifically those that have implemented closing auction processes for securities listed on other markets, as those auctions directly compete with a primary listing market and can impede price discovery by attracting limit orders from the primary listing market. For example, Nasdaq and NYSE Arca perform closing auction processes for securities listed on other exchanges. As Bats notes, the proposed rule change is designed to avoid doing so. It also is important to note that many brokers already provide market-on-close pricing to customers through products that match orders internally; orders that never make it onto an exchange. We believe the Bats Market Close may provide

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<sup>6</sup> Bats, in its filing, notes that the capture from the top tier for closing auction would be \$.0012 for NYSE and \$.0018 for Nasdaq while that for continuous trading would be \$.00055 for NYSE and -.00005 for Nasdaq, which are much lower than the capture for their respective closing auctions.

<sup>7</sup> If information regarding imbalances are essential to the overall price discovery process, and therefore to the overall efficiency of the markets, we question why such information is not provided via the Securities Information Processor ("SIP") as opposed to through exchanges' proprietary data feeds. Doing so would make such information more available and accessible to all market participants and is less costly than the proprietary feeds exchanges offer.

incentives for these brokers to send their orders to an exchange and, in turn, increase the transparency and potentially overall price discovery at the close.<sup>8</sup>

### **The Proposal Does Not Add to the Complexity of the Markets**

Clearpool also does not believe that the proposal adds to the complexity of the markets. One argument around complexity that has been set forth is that, if the Bats Market Close is introduced, market participants will have to deal with additional market data around imbalances. We find this to be a misleading argument, and a self-serving one by exchanges.

Currently, exchanges have many market data feeds that firms must purchase to ensure that they have the information necessary to make informed execution decisions. Adding another imbalance feed will not add to the complexity of what market participants must already do today as market participants have shown that they have the capabilities to re-aggregate multiple data feeds to determine liquidity in the closing auction. Given the small amount of information that goes into the closing data feed, this is not as difficult as compared to, for example, re-aggregating a high message volume quote feed.

### **Proposed MOC Cut-Off Time Should be Adjusted**

Under the proposal, MOC orders designated for participation in the Bats Market Close would be able to be entered, cancelled and replaced until 3:35 p.m. Eastern Time (“MOC Cut-Off Time”).<sup>9</sup> After that time, no action can be taken with respect to those orders and the system would then match for execution all buy and sell MOC orders entered into the system based on time priority.

Bats has stated that the MOC Cut-Off Time, while set to 3:35pm Eastern for the initial rollout, could be adjusted by Bats.<sup>10</sup> Clearpool recommends that Bats extend the MOC Cut-Off Time closer to the market close. Such an extension may alleviate concerns surrounding the impact of the proposal on price discovery and would still allow time for MOC orders that go unmatched to be sent to the primary exchange closing auctions.

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<sup>8</sup> While we do not believe this would be the primary benefit of the proposal, we acknowledge that the proposal could provide a mechanism for market participants to execute their orders at the official closing price should a system disruption occur on the primary listing market that prevents them from entering orders prior to the proposed cut off time for entering MOC orders.

<sup>9</sup> Currently, the NYSE designates the cut-off time for the entry of Market At-the-Close Orders as 3:45 p.m. Eastern Time and Nasdaq designates the “end of the order entry period” as 3:50 p.m. Eastern Time.

<sup>10</sup> See Bats Market Close FAQ at [http://cdn.batstrading.com/resources/membership/Bats\\_Market\\_Close\\_FAQ.pdf](http://cdn.batstrading.com/resources/membership/Bats_Market_Close_FAQ.pdf).

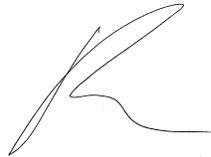
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We offer our assistance to the Commission as it examines the issues raised by the proposal. If you have any questions on our comment letter, please feel free to contact me directly at [REDACTED] or at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to be 'Ray Ross', written in a cursive style.

Ray Ross  
Chief Technology Officer

cc: The Honorable Jay Clayton, Chair  
The Honorable Kara M. Stein, Commissioner  
The Honorable Michael S. Piwowar, Commissioner

Heather Seidel, Acting Director, Division of Trading and Markets  
Gary Goldsholle, Deputy Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading & Markets