



Elizabeth K. King
General Counsel and
Corporate Secretary

New York Stock Exchange
11 Wall Street
New York, NY 10005
T+ [REDACTED]
F+ [REDACTED]

August 9, 2017

VIA E-MAIL

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

Re: Securities Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR-BatsBZX-2017-34) (the "BZX Proposal")

Dear Mr. Fields:

NYSE Group, on behalf of New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), and NYSE American LLC ("NYSE American"), appreciates the opportunity to provide additional comments to the Securities and Exchange Commission ("Commission") on the above-referenced proposed rule change by Bats BZX Exchange, Inc. ("BZX") to add a "Bats Market Close."

NYSE Group previously commented on the BZX Proposal and explained why it believes it is not consistent with the Securities Exchange Act of 1934, as amended ("Exchange Act") and the Commission's rules thereunder.¹ As the NYSE Group explained in that letter, the primary listing exchanges are required to support the technology and regulatory costs associated with running a closing auction and establishing an official closing price; to approve the use of this price by another exchange, which bears none of the costs or risks associated with the closing auction process, would be an unfair burden on competition.²

This letter supplements its earlier comment letter and responds to certain points raised by BZX in its response to comment letters.³

A. The BZX proposal should be disapproved because it is not consistent with the Exchange Act.

To better understand how the BZX Proposal would be a substantial burden on competition that

¹ See Letter from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated June 13, 2017.

² 15 U.S.C. 78f(b)(8).

³ See Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated August 2, 2017.

would not be consistent with the Exchange Act, it is important to understand the significant resources NYSE Group exchanges dedicate to the processes involved in determining the official closing price of a security.

Operating auctions is the most technologically complicated function of an exchange. NYSE Group has invested significantly in its intellectual property and software assets to implement methods and systems that facilitate orderly price discovery in the closing auction consistent with its exchanges' rules. These dedicated resources include human and computer assets to build, test, monitor, and maintain the processing logic and system capacity necessary to perform these complex tasks during order flow volume peaks.

For example:

- On NYSE, while the designated market maker (“DMM”) assigned to the security has the regulatory obligation to facilitate the closing of trading, NYSE provides the systems to facilitate this obligation. Among other things, these systems calculate and disseminate regularly-updated order imbalance information (which includes calculating data fields with the projected price and size of each security’s auction), consolidate and rank orders that would be eligible to participate in the closing auction, and provide DMM systems with the information necessary for the DMMs to meet their regulatory obligation⁴, all while continuous trading is ongoing.
- Additionally, NYSE develops, tests and supports the systems by which NYSE floor brokers enter and manage their customers’ interest in the closing process. These systems include not only order management and execution capabilities, but also user interfaces, broker handheld devices, risk management tools, and wireless networks.
- Further, NYSE Regulation develops, tests and maintains surveillance tools necessary to monitor and regulate the DMM, floor broker and electronic order book activity leading up to and in the closing process.
- On NYSE Arca and NYSE American, which operate fully automated closing auctions, the systems calculate and disseminate auction size and order imbalance information, enforce order entry during the Closing Auction Imbalance Freeze, calculate auction collars on a security-by-security basis, and determine the price of the auction based on the imbalance and applicable auction collars for a security. The systems are designed to address variables that could impact pricing, such as how to price a Closing Auction if the imbalance is outside the auction collars or if there are only market orders on both sides of the market. In addition, because trading on these exchanges continues after the Closing Auction, NYSE Arca and NYSE American also need to address additional complexities relating to the transitions between trading sessions, including processing orders that were received during auction processing.⁵

⁴ See generally NYSE Rule 123C.

⁵ See generally NYSE Arca Equities Rule 7.35 and NYSE American Rule 7.35E.

Under the BZX Proposal, BZX would use the prices established through these processes and sell them at lower cost to its members. BZX is able to offer the closing prices to its members at a lower fee than those offered by the primary listing exchanges because BZX does not have to expend the resources described above to build, test, monitor, or maintain any of the complex systems involved in determining those closing prices. For this reason, NYSE Group believes that the BZX Proposal is not consistent with the Exchange Act because it would impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.

B. BZX's letter does not address the concerns of commenters

BZX devalues the perspective of comments submitted to the Commission by issuers. NYSE Group believes that issuers provide an important and valued perspective on equity market structure, particularly as it relates to the protection of investors. Too often, the voices of the financial intermediaries take precedence over the concerns expressed by the issuer and investor communities. Importantly, the companies that chose to submit comment letters on the BZX Proposal are sophisticated and independent and their comments are distinct from the comment letter submitted by NYSE Group. As an operator of three primary listing exchanges, NYSE Group is a voice for the issuer community, not the other way around.

In addition, BZX continues to claim that its proposal is a "competitive response." It is not; it is an anti-competitive response. As discussed above, NYSE Group expends considerable resources to provide its closing auctions and create the prices produced by those auctions. BZX is not proposing a competing product, it is proposing to take the prices produced by the resources expended by NYSE Group (and Nasdaq) and sell those prices to its members at a lower price. At best, the BZX proposal is an unfair burden on competition; at worst, the proposal is a misappropriation of the prices created by the primary listing exchanges.

BZX also has not responded to commenters' concerns that siphoning away MOC orders from the primary listing exchange's closing auction would impact price discovery. BZX simply asserts that it would not and dismisses legitimate examples of impact on the official closing price without providing evidence to the contrary. BZX further claims that, because Nasdaq and NYSE Group offer competing auctions, there is no basis for the claim that BATS proposal would adversely impact the price discovery process. This argument is intentionally misleading by equating the BZX Proposal with the closing auctions offered by Nasdaq and NYSE Group in their respective non-listed securities. Unlike Nasdaq and NYSE Group, BZX would not be offering a competing auction process nor a facility to establish the official closing price should a primary listing exchange invoke its closing contingency plan. Rather, BZX proposes to sell the price that a primary listing exchange has established through its auction process at a lower cost to its members. This is not, as BZX characterizes it, a "meaningful alternative." It is piracy.

By contrast, the closing auctions offered by Nasdaq and NYSE Group in securities not listed on their respective exchanges produce independent closing prices from the primary listing exchange's closing prices. As a consequence, these Nasdaq and NYSE Group auctions are truly a "competitive" offering and are not founded on taking the prices created by the primary listed exchanges' closing auctions. Because these competitive auctions do produce different closing prices than the primary listing exchange official closing price, Nasdaq and NYSE Group have been unable to attract significant volume to their closing auctions in non-primary securities. In fact, because of fragmentation concerns, NYSE Arca did not offer closing auctions for non-

primary securities until August 2016. NYSE Arca re-commenced its closing auction in non-primary securities to provide an alternative to market participants in the event that NYSE, Nasdaq, or BZX is unable to conduct a closing auction in some or all of their listed securities. BZX proposes a more complex and less comprehensive method for managing closing contingency procedures that provides no alternative for LOC Orders or any later-entered MOC Orders that are not paired off. Aside from this being a proposal that NYSE Group believes is inferior to the current contingencies, it has no relevance on whether the BZX Proposal is consistent with the Exchange Act.

BZX also contends that because Nasdaq and NYSE Group permit their members to collect and retain MOC orders and match them internally off-exchange, that the Commission should allow it to offer an "identical facility" to these broker-dealers. While NYSE Group believes that off-exchange internalization of MOC order flow degrades the public price and size discovery of the primary listing exchange's closing auction, these broker-dealer activities are neither subject to review by the Commission nor held to Exchange Act standards. BZX may desire that their proposed rule changes be evaluated as if they were a broker-dealer, but that is not currently the law. NYSE Group does not believe an exception should selectively be made for the BZX Proposal and that the proposal, therefore, must be disapproved as it is not consistent with the Exchange Act standards applicable to exchange proposals.

Finally, BZX's disparaging claims about the NYSE closing auction and the role of the Designated Market Maker ("DMM") are not germane to whether the BZX Proposal is consistent with the Exchange Act. The effectiveness of the NYSE closing auction is demonstrated by the scale of the liquidity event and the low levels of volatility observed. BZX's opinion, while unfounded, has no bearing on whether it is consistent with the Exchange Act for a registered exchange to sell the price that is derived by the primary listing exchange's closing auction process at lower cost to its own members.

For the foregoing reasons and the reasons set forth in its first comment letter, NYSE Group respectfully requests that the Commission disapprove the BZX Proposal.

Sincerely,



Elizabeth K. King

cc: Hon. Jay Clayton, Chairman
Hon. Michael Piwowar, Commissioner
Hon. Kara Stein, Commissioner
Heather Seidel, Acting Director of Trading and Markets
David Shillman, Associate Director of Trading and Markets