



October 25, 2016

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

**RE: Securities Exchange Act Release No. 78860 (September 16, 2016); SR-CHX-2016-16**

Dear Mr. Fields:

Bats Global Markets, Inc. (“Bats”) appreciates the opportunity to comment on the above-referenced proposed rule change in which the Chicago Stock Exchange, Inc. (“CHX”) proposes to adopt the CHX Liquidity Taking Access Delay (“LTAD”), which would require all new incoming orders that could immediately execute against one or more orders resting on the CHX book to be intentionally delayed by 350 microseconds before such delayed order may be processed by the CHX matching engine.

As explained below, Bats believes the proposal has the potential to benefit investors, in the form of tighter spreads and deeper liquidity made available to them. However, Bats believes the LTAD raises significant market structure issues that CHX failed to address in its proposed rule change and that the Securities and Exchange Commission (“Commission”) must address prior to approval. Importantly, as Bats and other market participants cautioned in the context of the Investor’s Exchange, Inc. (“IEX”) exchange application and related interpretive guidance,<sup>1</sup> narrowly focused and ad hoc interpretations of the provisions of Regulation NMS can cause confusion about what is and is not permissible and further serve to unnecessarily complicate market structure. CHX’s proposed LTAD is the first of what will likely be a series of complex order types and/or delay mechanisms following the IEX approval that merit important Commission consideration. Bats urges the Commission to proactively set forth clear standards for exchanges and other market participants with regard to LTAD and access delays and to not address issues potentially raised by such order types on a one-off basis through SRO rule filings.

CHX’s proposed rule change did not address any implications under Rule 602 of Regulations NMS (the “Firm Quote Rule”).<sup>2</sup> Bats believes LTAD, without further interpretive guidance from the Commission on yet another provision of Regulation NMS, would likely violate the Firm Quote Rule. Specifically, section (b)(2) of the Firm Quote Rule requires:

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<sup>1</sup> See Securities Exchange Act Release Nos. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10-222); and 78102 (June 17, 2016), 81 FR 40785 (June 23, 2016) (File No. S7-03-16).

<sup>2</sup> 17 CFF 242.602.

each responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in any amount up to its published quotation size.<sup>3</sup>

Bats believes LTAD raises the following important question under the Firm Quote Rule: at what point is an order to buy or sell a subject security “presented” to the responsible broker or dealer, requiring it to execute that order against its displayed quotation? Is it the time the incoming order is received by the exchange displaying the quotation, or at some later time? If it is not the former, given the immediacy of exchange interactions when orders reach an exchange, it is difficult to understand the interplay between the Firm Quote Rule and automated trading. And if it is the former, any interpretative guidance that would permit the responsible broker-dealer to fade its quote after an order has arrived at the exchange would seem to violate the policy goals of the Firm Quote Rule. It appears the Commission would need to answer this important question should it approve CHX’s proposed rule change.

Bats is concerned that should the Commission address this Firm Quote Rule issue and continue to address issues raised by complex order types and delay mechanisms on an ad hoc basis through SRO rule filings, that the resulting narrowly focused piecemeal interpretations of the provisions of Regulation NMS will cause confusion about what is and is not permissible and further serve to unnecessarily complicate market structure. Bats, therefore, urges the Commission to proactively set forth clear and comprehensive standards for exchanges and other market participants with regard to access delays such as LTAD. Our market structure can no longer be a patchwork of Commission interpretations.

Finally, while Bats believes that the proposal has the potential to benefit investors through tighter spreads and deeper liquidity, it also has the potential to instead distort the market view of available liquidity if such liquidity proves to be ephemeral. Bats is concerned that any benefit of that additional delay in the form of tighter displayed spreads and larger displayed size may in fact prove illusory by providing the liquidity provider time to adjust its displayed quotation. As a result, Bats requests that if the Commission ultimately approves this proposal, it does so on a pilot basis to enable the Commission and market participants to study any changes in and its impact on market quality. For example, it is important that such a pilot demonstrates that any improved, tighter spreads and/or depth of liquidity are just as accessible (as measured by similar fill rates) as other non-delayed quotes/access of competing exchanges. In other words,

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<sup>3</sup> 17 CFF 242.602(b)(2).

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the CHX pilot must result in not only tighter and larger *quotes*, but in better priced (and larger) *trades*. Any pilot data must support that the benefits of improved market quality for investors must outweigh any newly imposed frustrations for liquidity takers (who are often acting as agents for client orders) or any other negative externalities for the broader national market. Bats believes such a study could better inform the Commission and others allowing them to comprehensively assess the value of such delay mechanisms and their place in today's market structure.

Finally, we caution the Commission when considering this proposal and future access delay proposals. These proposals are artificially determining winners and losers in the never ending battle of informational time and place advantages. It truly is a zero-sum game: those that gain a speed advantage to the detriment of others will also gain a profit advantage to the detriment of others. The Commission must choose the winners wisely and understand the cost to the losers.

Bats appreciates the opportunity to comment on the above proposed rule change. Please feel free to contact me if you have any questions related this matter.

Sincerely,



Eric Swanson  
EVP, General Counsel and Secretary