SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77818; File No. SR-BatsBZX-2016-16)

May 12, 2016

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add Subparagraph (5) to Rule 21.1(h) Modifying the Operation of Orders Subject to the Display Price Sliding Process when a Contra-Side Post Only Order is Received by the Bats BZX Exchange Options Platform

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 3, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. 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 add subparagraph (5) to Rule 21.1(h) modifying the operation of orders subject to the display price sliding process when a contra-side Post Only Order[5] is received by the Exchange's options platform ("BZX Options").

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A).

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

5 See Exchange Rule 21.1(d)(8).

The text of the proposed rule change is available at the Exchange's website at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add subparagraph (5) to Rule 21.1(h) modifying the operation of orders subject to the display price sliding process when a contra-side Post Only Order is received by BZX Options.

Under current Exchange Rule 21.1(h), an order subject to the display price sliding process that, at the time of entry, would lock or cross a Protected Quotation of another options exchange will be ranked at the locking price in the BZX Options Book[6] and displayed by the System at one minimum price variation below the current National Best Offer ("NBO")[7] (for bids) or to one minimum price variation above the current National Best Bid ("NBB")[8] (for

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6 "BZX Options Book" is defined as "the electronic book of options orders maintained by the Trading System." See Exchange Rule 16.1(a)(9).

7 See Exchange Rule 16.1(a)(29) (defining the terms "NBB", "NBO", and "NBBO").

8 Id.

offers). Post Only Orders are orders that are to be ranked and executed on the Exchange pursuant to Rule 21.8 (Order Display and Book Processing) or cancelled, as appropriate, without routing away to another trading center.[9] Currently, a Post Only Order will not remove liquidity from the BZX Options Book unless the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BZX Options Book and subsequently provided liquidity. In order to prevent circumstances on the BZX Options Book where an order is ranked at the displayed price of a resting contra-side order, which could result in apparent violations of the Exchange's priority rule, an incoming Post Only Order is currently rejected if it would be posted at the locking price of a contra-side order subject to the display price sliding process. In particular, accepting such order would result in a situation where an order is displayed on the Exchange and a contra-side order is ranked at the same price as such order. In turn, if an execution at that price is reported by the Exchange, the Exchange believes a User[10] representing the order displayed on the Exchange might believe that an incoming order was received by the Exchange and then bypassed such order (i.e., removing some other liquidity on the same side of the market as the displayed order). As described in further detail below, the proposal will avoid the possibility of an execution of an order subject to display-price sliding at the same price as an order displayed on the Exchange. The Exchange notes that the circumstance described above, where an incoming Post Only Order is rejected by the Exchange, is limited to times when the Exchange is not already quoting at the NBBO and a Post Only Order

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9 See Exchange Rule 21.1(d)(8).

10 "User" is defined as "any Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access)." See Exchange Rule 16.1(a)(63).

is seeking to join either the NBB or NBO but there is a resting display-price slid order on the contra-side of the Exchange's order book.

In order to facilitate the entry of orders priced at the National Best Bid or Offer ("NBBO"), the Exchange proposes to add subparagraph (5) to Rule 21.1(h) modifying the operation of orders subject to the display price sliding process when a contra-side Post Only Order is received by BZX Options. Under proposed subparagraph (5), to the extent an incoming Post Only Order would be ranked and displayed at a price equal to the ranked price of a contra-side order subject to display-price sliding (i.e., the locking price) the order subject to display-price sliding would be re-ranked at one (1) cent above the current NBB (for offers) or one (1) cent below the current NBO (for bids). An order subject to display price sliding that is re-ranked pursuant to proposed subparagraph (5) of Rule 21.1(h) would be re-ranked at the locking price in the event there is no longer displayed contra-side interest at the locking price. In both cases, the order would remain displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers).

The below examples describe the operation of orders subject to display price sliding under proposed subparagraph (5) to Rule 21.1(h).

<u>Example 1: Securities Quoted in Penny Increments – Proposed Operation</u>. Assume the NBBO is $1.00 x $1.01 and that the Exchange's displayed best bid and offer ("BBO") is $1.00 x $1.02. Also assume that a non-routable order to buy at $1.01 subject to display price sliding is resting on the BZX Options Book, ranked at $1.01 and displayed at $1.00. Assume a Post Only Order to sell at $1.01 is entered and, under current functionality, would be rejected because it is executable at the locking price of the order to buy subject to display price sliding resting on the BZX Options Book. As proposed, the order to buy subject to display price sliding would be re-

ranked and would remain displayed at $1.00, one (1) cent below the current NBO. The Post Only Order to sell would be posted to the BZX Options Book, ranked and displayed at $1.01 (i.e., allowing the Exchange to join the NBBO of $1.00 x $1.01). If the Post Only Order to sell is executed or cancelled, the order to buy subject to display price sliding would be re-ranked at $1.01, its original ranked price, and would remain displayed at $1.00.

Example 2: Securities Quoted in Non-Penny Increments – Proposed Operation. Assume the NBBO is $1.00 x $1.05 and that the Exchange's BBO is $1.00 x $1.10. Also assume that a non-routable order to buy at $1.05 subject to display price sliding is resting on the BZX Options Book, ranked at $1.05 and displayed at $1.00. Assume a Post Only Order to sell at $1.05 is entered and, under current functionality, would be rejected because it is executable at the locking price of the order to buy subject to display price sliding resting on the BZX Options Book. As proposed, the order to buy subject to display price sliding would be re-ranked at $1.04, one (1) cent below the NBO, and would remain displayed at $1.00. The Post Only Order to sell would be posted to the BZX Options Book, ranked and displayed at $1.05 (i.e., allowing the Exchange to join the NBBO of $1.00 x $1.01). If the Post Only Order to sell is executed or cancelled, the order to buy subject to display price sliding would be re-ranked at $1.05, its original ranked price, and would remain displayed at $1.00.

The Exchange notes that similar behavior currently exists on its equities platform that permits an order to buy(sell) subject to display price sliding to be executed at one-half minimum price variation more(less) than the price of a contra-side displayed BZX Post Only Order.[11] Specifically, under Exchange Rule 11.9(g)(1)(E), BZX Post Only Orders are permitted to post and be displayed opposite the ranked price of orders subject to display-price sliding. In the event

[11] See Exchange Rule 11.9(c)(6).

an order subject to display-price sliding is ranked on the BZX Book[12] at a price equal to an opposite side order displayed by the Exchange, it cannot be executed at that price and instead will be subject to processing as set forth in Rule 11.13(a)(4)(D). Under Exchange Rule 11.13(a)(4)(D), in the event that an incoming order is a market order or is a limit order priced more aggressively than the displayed order, the Exchange will execute the incoming order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order. This behavior is designed to avoid an apparent priority issue. In particular, in such a situation the Exchange believes a User representing an order that is displayed on the Exchange might believe that an incoming order was received by the Exchange and then bypassed such displayed order, removing some other non-displayed liquidity on the same side of the market as such displayed order. Similar to what the Exchange proposes for BZX Options, the above described functionality on its equites platform also effectively changes the ranked price of the order subject to display price sliding. Although the underlying solution is intended to solve the same circumstance, because half-penny executions are not permitted with respect to options transactions, on BZX Options the Exchange proposes to adjust the ranked price of the display-price slid order when a contra-side Post Only order is received by BZX and posted at the locking price.

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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12 See BZX Rule 1.5(e).

particular, with the requirements of Section 6(b) of the Act.[13] In particular, the proposal is consistent with Section 6(b)(5) of the Act[14] because it is designed to encourage displayed liquidity and offer market participants greater flexibility to post liquidity on the BZX Options Book, thereby promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in facilitating transactions in securities, removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.

Under current functionality, an incoming Post Only Order would be rejected if it is executable at the locking price of a contra-side order subject to display price sliding resting on the BZX Options Book. This, at times, inhibits market participants, including Market Makers[15] from utilizing Post Only Orders to quote at the NBBO. Post Only Orders allow Users to post aggressively priced liquidity, as such Users have certainty as to the fee or rebate they will receive from the Exchange if their order is executed. Without such ability and by rejecting such Post Only Orders in scenarios described herein, the Exchange believes that certain Users would simply post less aggressively priced liquidity, and prices available for market participants, including retail investors, would deteriorate. Accordingly, the Exchange believes that the proposed rule change promotes just and equitable principles of trade by enhancing the liquidity available to all market participants by allowing Market Makers and other liquidity providers to add liquidity to the Exchange at the NBBO without fear that their order would be rejected. In addition, the proposed rule change would assist Market Makers in satisfying their two-sided

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13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

15 See Exchange Rule 16.1(a)(37).

quoting obligations under Exchange Rules 22.5(a)(1) and 22.6(d)(1). The proposed rule change should increase displayed liquidity at the NBBO on the Exchange, resulting in improved market quality and price discovery for all participants. The Exchange also notes that similar behavior currently exists on its equities platform that permits an order to buy(sell) subject to display price sliding to be executed at one-half minimum price variation more(less) than the price of a contra-side displayed BZX Post Only Order.[16]

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change would enhance competition by enabling market participants to post liquidity at the NBBO, thereby increasing the liquidity on the Exchange at the NBBO. For all the reasons stated above, the Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance 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. The Exchange has not received any written comments from members or other interested parties.

[16] See Exchange Rules 11.9(g)(1)(E) and 11.13(a)(4)(D). See also Securities Exchange Act Release No. 64754 (June 27, 2011), 76 FR 38712 (July 1, 2011) (SR-BATS-2011-015) (Order Approving a Proposed Rule Change to Amend BATS Rule 11.9, Entitled "Orders and Modifiers" and BATS Rule 11.13, Entitled "Order Execution").

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[17] and Rule 19b-4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b-4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b-4(f)(6) under the Act[21] normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)[22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change will benefit market participants by enhancing their ability to post liquidity at the NBBO, and that waiver of the operative delay may increase displayed liquidity at the NBBO on the Exchange, resulting in improved market quality and price

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17 15 U.S.C. 78s(b)(3)(A)(iii).

18 17 CFR 240.19b-4(f)(6).

19 15 U.S.C. 78s(b)(3)(A).

20 In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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. The Exchange has satisfied this requirement.

21 17 CFR 240.19b-4(f)(6).

22 17 CFR 240.19b-4(f)(6)(iii).

discovery for all participants in a timely manner. Further, the Exchange notes that the proposed rule change will not require any systems changes by Exchange Users that would necessitate a delay, as the Exchange will now accept and no longer reject Post Only Orders in the situations described herein. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[23] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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 necessary or appropriate in the public interest, for the protection of investors, or 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2016-16 on the subject line.

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23 For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

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

All submissions should refer to File Number SR-BatsBZX-2016-16. 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 will also 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-BatsBZX-2016-16 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.[24]

Robert W. Errett
Deputy Secretary

[24] 17 CFR 200.30-3(a)(12).