

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78165; File No. SR-BatsBYX-2016-14)

June 27, 2016

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.22(i) Identifying Certain Transactions as the Bats One Opening Price or the Bats One Closing Price

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 June 17, 2016, Bats BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 amend the content of the Bats One Feed under Rule 11.22(i) to identify certain transactions as the “Bats One Opening Price” or the “Bats One Closing Price.”

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to amend the content of the Bats One Feed under Rule 11.22(i) to identify certain transactions as the “Bats One Opening Price” or the “Bats One Closing Price.” The last sale information described below that the Exchange proposes to identify as the Bats One Opening or Closing Price is currently included in the Bats One Feed. The Exchange notes that it is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on BYX and its affiliated exchanges³ and for which the Bats Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan.⁴

The last sale information disseminated as part of the Bats One Feed includes the price, size, time of execution, and individual Bats Exchange on which the trade was executed. The last

³ BYX’s affiliated exchanges are the Bats BZX Exchange, Inc. (“BZX”), Bats EDGA Exchange, Inc. (“EDGA”), and Bats EDGX Exchange, Inc. (“EDGX”, together with EDGA, BZX, and BYX, the “Bats Exchanges”).

⁴ See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) (“Bats One Approval Order”).

sale information also includes the cumulative number of shares executed on all Bats Exchanges for that trading day.⁵

The Exchange now proposes to identify certain last sale transactions as the Bats One Opening Price or the Bats One Closing Price. For securities listed on BZX,⁶ the Bats One Opening Price would be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5)⁷ and the Bats One Closing Price would be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3).⁸ For securities not listed on BZX, the Bats One Opening Price would be the first last sale eligible trade⁹ that occurred on a Bats Exchange after 9:30 a.m. Eastern Time. That first trade would be identified as the Bats One Opening Price when disseminated via the Bats One Feed. The Bats One Closing Price for non-BZX listed securities would be the final last sale eligible trade to occur on a Bats Exchange prior to 4:00 p.m. Eastern Time. The Bats One Closing Price would be disseminated via the Bats One Feed after 4:00 p.m. Eastern Time. The

⁵ The Bats One Feed also contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels for all securities that are traded on the Bats Exchanges in addition to the Bats One Summary Feed (“Bats One Premium Feed”). For each price level on one of the Bats Exchanges, the Bats One Premium Feed includes a two-sided quote and the number of shares available to buy and sell at that particular price level.

⁶ A BZX listed security is a security listed on the BZX pursuant to Chapter 14 of BZX’s Rules.

⁷ The term “BZX Official Opening Price” is the price disseminated to the consolidated tape as the market center opening trade. See BZX Rule 11.23(a)(5). In the event that there is no opening auction for a BZX listed security, the BZX Official Opening Price will be the price of the final last sale eligible trade, which will be the previous BZX Official Closing Price. See BZX Rule 11.23(b)(2)(B).

⁸ The term “BZX Official Closing Price” is the price disseminated to the consolidated tape as the market center closing trade. See BZX Rule 11.23(a)(3). In the event that there is no closing auction for a BZX listed security, the BZX Official Closing Price will be the price of the final last sale eligible trade. See BZX Rule 11.23(c)(2)(B).

⁹ A last sale eligible trade must be of at least one round lot. A round lot consists of one hundred (100) shares. See Exchange Rule 11.10.

Exchange would not disseminate a Bats One Opening or Closing Price for a particular trading day when a trade satisfying the above criteria does not occur.

In addition, the Bats One Opening and Closing Price for BZX listed securities are included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats One Feed. Also, the Bats One Opening and Closing Prices for non-BZX listed securities is derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act¹² in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78k-1.

of Regulation NMS,¹³ which provides that any national securities exchange which distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition in the market data provider industry.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying certain transactions as the Bats One Opening or Closing Price to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information.

Lastly, the proposal would not permit unfair discrimination because the information will be available to all investors and market data vendors on an equivalent basis. In addition, any investor that wishes to receive such information via a different source will be able to do so. As noted above, the Exchange is not proposing to add new data elements to the Bats One Feed; it is simply proposing to identify existing data elements as the Bats One Opening or Closing Price. Specifically, the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities are currently provided and disseminated via the consolidated tape¹⁴ and included in the depth-of-book data feeds for each of the Bats Exchanges, which are used to construct the Bats

¹³ See 17 CFR 242.603.

¹⁴ See BZX Rule 11.23(a)(3) and (5).

One Feed. In addition, investors can also independently identify the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as prices of the first and final last sale eligible transaction to occur during Regular Trading Hours¹⁵ are posted to the consolidated tape. Also, the Bats One Opening and Closing Prices for non-BZX listed securities are derivable from the underlying data feeds that comprise the Bats One Feed, as those feeds contain the necessary last sale information to identify if a transaction is last sale eligible.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposal will impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act. A vendor seeking to offer a similar product by identifying certain transaction as an opening or closing price would be able to do so on the same terms as the Exchange. As discussed in in [sic] the Bats One Approval Order,¹⁶ any entity may separately purchase the individual underlying products, and if they so choose, perform an aggregation and consolidation function similar to that which the Exchange performs in creating the Bats One Feed. Any entity may offer a data feed with the same information included in the Bats One Feed to sell and distribute it to its clients with no greater cost than the Exchange. Likewise, a competing vendor could independently identify certain transaction as an opening or closing price and include such information as part of their product to be disseminated to their customers. As discussed above, the BZX Official Opening Price and BZX Official Closing Price for BZX listed securities is currently provided to and disseminated via the consolidated tape.¹⁷ A competing market data vendor could also independently identify

¹⁵ Regular Trading Hours is defined as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See Exchange Rule 1.5(w).

¹⁶ See Bats One Approval Order, supra note 4.

¹⁷ See BZX Rule 11.23(a)(3) and (5).

the Bats One Official Opening and Closing prices for non-BZX listed securities via other sources, as such prices are the first and final last sale eligible transaction to occur during Regular Trading Hours. Therefore, the Exchange believes the identification of an Official Bats One Opening Price or Closing Price in the Bats One Feed would not impose any burden on competition not deemed necessary or appropriate in furtherance of the purposes of the Act.

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.

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

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁹ the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its 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.

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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4.

(3) 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-BatsBYX-2016-14 on the subject line.

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-BatsBYX-2016-14. 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-BatsBYX-2016-14 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.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).