

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81777; File No. SR-BatsBZX-2017-63)

September 29, 2017

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Implementation Date For Certain Changes to Exchange Rules 14.11 and 14.12

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 28, 2017, Bats BZX Exchange, Inc. (“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 Act³ 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 extend the date on which certain changes to Exchange Rules 14.11 and 14.12 would be implemented.

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

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).

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

On November 18, 2016 the Exchange filed a proposed rule change, as subsequently amended by Amendments No. 1 and 2 thereto (as amended, the “Proposed Rule Change”), to adopt certain changes to Exchange Rules 14.11 and 14.12 to add additional continued listing standards for exchange-traded products (“ETP”) as well as clarify the procedures that the Exchange will undertake when an ETP is noncompliant with applicable rules. Given the scope of the amendments specified in the Proposed Rule Change, the Exchange proposed that such amendments not be implemented until October 1, 2017. On March 7, 2017, the Commission granted approval of the Proposed Rule Change, including the October 1, 2017 implementation date. On September 20, 2017, the Exchange submitted an interpretive filing (the “Interpretive Filing”)⁵ and on September 21, 2017 published a document that answers a series of frequently asked questions (the “FAQs”).⁶ The Interpretive Filing and FAQs are intended to provide

⁵ See SR-BatsBZX-2017-61, available at: http://cdn.batstrading.com/resources/regulation/rule_filings/approved/2017/SR-BatsBZX-2017-61.pdf.

⁶ The FAQs are available at: <http://cdn.batstrading.com/resources/listings/FAQs%20-%20New%20Cont%20List%20Standards%20FINAL.pdf>.

guidance as it relates to ETP issuers complying with the Proposed Rule Change upon implementation. The Exchange continues to engage with issuers about the Proposed Rule Change and will update the FAQs as needed based on those conversations. The Exchange now proposes to extend the implementation date of the amendments specified in the Proposed Rule Change to January 1, 2018.⁷

Since the Proposed Rule Change was approved, the Exchange has engaged in extensive conversations with issuers of listed ETPs, industry advocacy groups and index providers to discuss the new rule requirements and offer guidance on rule interpretation and application, and, as noted above, the Exchange recently submitted the Interpretive Filing and distributed the FAQs. As part of these conversations, the Exchange has learned that many issuers have already engaged in building and testing the necessary compliance systems, but that they have been unable to finalize implementation without this additional guidance. As such, ETP issuers have expressed concern about their ability to have in place well-tested systems and procedures to ensure compliance by the current October 1, 2017 implementation date. ETP issuers, and industry advocacy groups on their behalf, have explained that issuers will require time to design and test new compliance systems as well as engage in discussions with third-party providers to source and track new data elements required for rule compliance.⁸ An additional three months prior to implementation will allow ETP issuers to finish building, more thoroughly test, and enhance the systems and procedures that they've already developed in advance of the current October 1, 2017 implementation date. Further, the additional time prior to implementation will

⁷ See Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017) (SR-BatsBZX-2016-80).

⁸ See, for example, Letter, dated July 11, 2017, from Dorothy Donohue, Acting General Counsel, Investment Company Institute to Brent J. Fields, Secretary, Securities and Exchange Commission, available at <https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1846208-155175.pdf>.

further facilitate the ongoing discussion, which will include progress updates, between the Exchange, ETP issuers, and index providers.

The Exchange believes it is appropriate to extend the implementation date of the Proposed Rule Change to January 1, 2018 to provide ETP issuers with the time needed to finish developing and test their compliance procedures. In support of its proposal, the Exchange notes that the Proposed Rule Change imposes significant new compliance requirements on issuers that they have not been subject to previously. To meet these new compliance requirements, issuers must develop internal systems as well as coordinate with third-party service providers, such as index providers, to develop procedures by which they can obtain essential data, which includes the form, timing, and means by which such data is conveyed. Listed issuers have informed the Exchange that they are unable to complete and sufficiently test this extensive project by the pending October 1, 2017 implementation date. The Exchange believes that it is critical for ETP issuers to have the appropriate procedures and systems in place to monitor and evidence ETP compliance with the new continued listing rules before such rules are implemented in order to ensure meaningful compliance upon initial implementation, which could help avoid trading disruption in the ETPs. Therefore, the Exchange proposes to extend the implementation date for the Proposed Rule Change until January 1, 2018.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁹ in general and Section 6(b)(5) of the Act¹⁰ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

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 believes that the proposed amendment is consistent with the protection of investors because it will provide additional time for issuers to finish building, more thoroughly test, and enhance the systems and procedures prior to the initial implementation of the Proposed Rule Change which will help ensure compliance upon initial implementation which will further promote the policy goals underlying the Proposed Rule Change and would help avoid trading disruption in the ETPs. Since the Proposed Rule Change was approved, the Exchange has engaged in extensive conversations with issuers of listed ETPs, industry advocacy groups and index providers to discuss the new rule requirements and offer guidance on rule interpretation and application, and, as noted above, the Exchange recently submitted the Interpretive Filing and distributed the FAQs. As a result of these conversations and the recent distribution of interpretive guidance, ETP issuers have expressed concern about their ability to have in place well-tested systems and procedures to ensure compliance by the current October 1, 2017 implementation date. ETP issuers, and industry advocacy groups on their behalf, have explained that issuers will require time to design and test new compliance systems as well as engage in discussions with third-party providers to source and track new data elements required for rule compliance.¹¹ An additional three months prior to implementation will allow ETP issuers to more thoroughly test and enhance the systems and procedures that they've already developed in advance of the current October 1, 2017 implementation date. Further, the additional time prior to implementation will further facilitate the ongoing dialogue between the Exchange, ETP issuers, and index providers.

¹¹ See, for example, Letter, dated July 11, 2017, from Dorothy Donohue, Acting General Counsel, Investment Company Institute to Brent J. Fields, Secretary, Securities and Exchange Commission, available at <https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1846208-155175.pdf>.

Providing listed issuers with additional time before the implementation of the Proposed Rule Change furthers the protection of investors and the public interest because it will enhance investor confidence that listed issuers are complying with Exchange rules by providing sufficient time to finish building, more thoroughly test, and enhance the systems and procedures prior to the initial implementation, which could help avoid trading disruption in the ETPs.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate ETP issuers' ability to monitor and evidence compliance with approved continued listing rules by providing issuers with additional time to finish developing and testing their internal systems and procedures prior to the implementation date.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange received a copy of a letter from the Investment Company Institute, on behalf of ETP issuers, to the Securities [sic] Exchange Commission.¹² As described in Item 3 [sic], above, the Investment Company Institute detailed challenges that ETP issuers are facing in developing compliance systems to address the amendments contained in the Proposed Rule Change and have requested that the implementation date for such amendments be extended.

¹² See Footnote 5, *infra* [sic].

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

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁴ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ 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 Commission notes that waiver of the operative delay will allow the Exchange to immediately extend the implementation date of the Proposed Rule Change, and avoid the potential confusion and disruption that could result if the extension did not become operative until after October 1, 2017. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁶

¹³ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 change 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-2017-63 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-BatsBZX-2017-63. 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 the filing also will 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-2017-63 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.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).