

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77639; File No. SR-BatsBZX-2016-08)

April 18, 2016

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 14.3 Regarding the Requirements for the Listing of Securities that are Issued by the Exchange or any of its Affiliates

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 13, 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<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> 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 is proposing a rule change to make a series of changes to paragraph (e) of Exchange Rule 14.3 regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates.

The text of the proposed rule change is available at the Exchange’s website at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission’s Public

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 make a series of changes to paragraph (e) of Exchange Rule 14.3 regarding the reporting requirements on the Exchange should the Exchange or BZX Affiliate<sup>5</sup> list a security on the Exchange (the "Affiliate Security"). These changes are: (i) expanding the definition of Affiliate Security under Exchange Rule 14.3(e)(1)(B); (ii) specifying that the Exchange shall also prepare a report describing the Exchange's monitoring of the trading of an Affiliate Security; and (iii) making a series of organizational changes.

Exchange Rule 14.3(e)(1)(B) currently defines Affiliate Security as "any security issued by a BZX Affiliate, with the exception of Portfolio Depository Receipts as defined in Rule 14.11(b) and Index Fund Shares as defined in Rule 14.11(c)." The Exchange proposes to expand

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<sup>5</sup> Exchange Rule 14.3(e)(1)(A) defines "BZX Affiliate" as "the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where "control" means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity." The Exchange does not propose to amend the definition of BZX Affiliate.

the definition of Affiliate Security to include any Exchange-listed option on any security issued by a BZX Affiliate.

In the event that a BZX Affiliate seeks to list an Affiliate Security, paragraph (e)(2) of Rule 14.3 requires that prior to the initial listing of the Affiliate Security on the Exchange, Exchange personnel shall determine that such security satisfies the Exchange's rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the Exchange's Board of Directors. The Exchange proposes to renumber this paragraph as (e)(2)(A) and rename paragraph (2) as "Affiliate Securities Listed on the Exchange." The Exchange does not propose any additional changes to this section of Rule 14.3.

Current Rule 14.3(e)(3) states that throughout the continued listing of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report for the Regulatory Oversight Committee of the Exchange's Board of Directors. Current sub-paragraph (i) of the Rule 14.3(e)(3) requires that the report describe the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards, including, as described in current sub-paragraph (i)(a), the Affiliate Security's compliance with the Exchange's minimum share price requirement, and, as described under current sub-paragraph (i)(b) the Affiliate Security's compliance with each of the quantitative continued listing requirements.

The Exchange proposes to renumber paragraph (3)(A) of Rule 14.3(e) as paragraph as (2)(B) and reformat this section of the rule as follows. Paragraph (2)(B) would state that throughout the continued listing of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report for the Regulatory Oversight Committee of the Exchange's Board of Directors describing the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards. Paragraph (2)(B)(i) would require that the report include a

description of the Affiliate Security's compliance with the Exchange's minimum share price requirement and paragraph (2)(B)(ii) would require that the report include a description of the Affiliate Security's compliance with each of the quantitative continued listing requirements. The Exchange does not propose any substantive changes to this section of the rule.

Current sub-paragraph (ii) of Rule 14.3(e)(3)(A) states that the report shall also describe the Exchange's monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Rule 11.17, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules. The Exchange proposes to relocate current sub-paragraph (3)(A)(ii) under new sub-paragraph (3) to Rule 14.3(e). The Exchange proposes to include additional language specifying that the Exchange shall prepare a quarterly report on the Affiliate Security for the Regulatory Oversight Committee of the Exchange's Board of Directors that describes the activity described in the sub-paragraph. The Exchange proposes to include additional language that these requirements will be applicable throughout the trading of the Affiliate Security on the Exchange. Current sub-paragraph (3)(B) of Rule 14.3(e) also states that to the extent the Exchange uses Exchange staff to conduct surveillance of trading activity on the Exchange, the Exchange is required to engage an independent third party once a year to review and prepare a report regarding surveillance of the Affiliate Security and promptly forward to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission a copy of the report prepared by the independent third party. The Exchange proposes to eliminate the requirements of current sub-paragraph (3)(B) based on the fact that this requirement is not applicable on other national securities exchanges with similar rules regarding the listing or

trading of an affiliate security.<sup>6</sup> The Exchange does not propose any additional substantive changes to these sections of the rule.

Current Rule 14.3(e)(3)(A) also requires that the Exchange to promptly furnish a copy of the quarterly report required by current paragraph (e)(3)(A) to the Commission. The Exchange proposes to renumber this paragraph as (e)(4) and revise it to state that a copy of the reports required by proposed renumbered sub-paragraphs (2) and (3) of Rule 14.3(e), discussed above, will be forwarded promptly to the Commission.

Current sub-paragraph (C) of Rule 14.3(e)(3) requires the Exchange to commission an annual review and report by an independent accounting firm of the compliance of the Affiliate Security with the Exchange's listing requirements. The Exchange is required to promptly furnish a copy of this annual report to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission. The Exchange proposes to renumber this paragraph as (2)(C) of Rule 14.3(e) to conform with the reformatting of Rule 14.3(e) proposed above. The Exchange also proposes to delete the requirement that the report also be sent to the Commission as this requirement is proposed to be included in proposed paragraph (e)(4) discussed below. The Exchange does not propose any substantive changes to this section of the rule.

Lastly, current Rule 14.3(e)(4) states that in the event the Exchange determines that the BZX Affiliate is not in compliance with any of the Exchange's listing standards, the Exchange is required to notify the issuer of such non-compliance promptly and request a plan of compliance. The Exchange is also required to file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The required report identifies the date of the non-compliance, type of non-compliance, and any other material information conveyed to

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<sup>6</sup> See, e.g., NYSE Rule 497; Nasdaq Rule 4370.

the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, the Exchange is again required to notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange's listing standards, if any. The Exchange proposes to renumber this section of the rule as (2)(D) of Rule 14.3(e) to conform with the reformatting of Rule 14.3(e) proposed above. The Exchange does not propose any substantive changes to this section of the rule.

## 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 particular, with the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because 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, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Commission with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will continue to help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. The Exchange believes that the proposed amendments to Rule 14.3(e) would continue to eliminate any perception of a potential conflict of interest if a BZX Affiliate

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

seeks to list a security on the Exchange. The Exchange notes that the elimination of current subparagraph (3)(B) does not present any risk to investors or the public interest, as the Exchange is retaining the requirement to furnish quarterly reports to both the Regulatory Oversight Committee of the Exchange's Board and to the Commission. The Exchange also notes that other national securities exchanges with similar rules do not have such a provision.<sup>9</sup> Lastly, the Exchange believes that the reorganization of, and the additional specificity proposed to be included in Rule 14.3(e) promotes just and equitable principles of trade and remove impediments to a free and open market by providing greater transparency concerning the controls in place to address the potential conflicts of interest that may arise in the listing or trading of Affiliate Securities on the Exchange.

(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. The proposed rule change is not designed to address any competitive issues, but rather provide additional specificity and transparency to Members, Users, and the investing public regarding the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange.

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

Written comments were neither solicited nor received.

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

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<sup>9</sup> See supra, note 6.

the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> 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 waiver of the operative delay will allow the Exchange to implement the proposed rule change immediately in the event an Affiliate seeks to list on the Exchange or the Exchange seeks to trade an Affiliate Security on the Exchange. The Exchange further states that the proposal will provide greater transparency concerning the controls in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

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.<sup>16</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-BatsBZX-2016-08 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.

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<sup>16</sup> 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).

All submissions should refer to File Number SR-BatsBZX-2016-08. 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-2016-08 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.<sup>17</sup>

Robert W. Errett  
Deputy Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).