

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78527; File No. SR-BatsBZX-2016-47)

August 10, 2016

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish a Closing Contingency Procedure

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 August 2, 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 Act³ and Rule 19b-4(f)(6) 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 the Substance of the Proposed Rule Change

The Exchange is proposing to establish a Closing Contingency Procedure that would enable the Exchange to designate a back-up exchange to provide an official closing price in the event that the Exchange’s market is impaired and unable to execute a closing auction for all or a subset of listed securities under the Exchange’s standard closing procedures. The Commission

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).

has recently approved substantially similar proposals submitted by the New York Stock Exchange LLC (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”).⁵

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

Background

The Exchange has robust and resilient systems that are designed to ensure fair and orderly markets, including multiple redundancies and back-up systems. Currently, the Exchange’s Official Closing Price is defined in Rule 11.23(a)(3) as the price disseminated to the

⁵ See Securities Exchange Act Release Nos. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR-NYSE-2016-18) (“Notice of Filings of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1, To Provide for How the Exchanges Would Determine an Official Closing Price if the Exchanges Are Unable To Conduct a Closing Transaction”); 78014 (June 8, 2016), 81 FR 38755 (June 14, 2016) (SR-NASDAQ-2016-035) (“Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Secondary Contingency Procedures for the Exchange’s Closing Cross”).

consolidated tape as the market center closing trade. In this proposal, the Exchange is proposing to amend Rule 11.23 to establish Closing Contingency Procedures.

As proposed, the Exchange, as a listing market, will designate a back-up exchange to provide an official closing price in the event that the Exchange's market is impaired and unable to execute a closing auction for all or a subset of listed securities under the standard closing procedures set forth in Rule 11.23(c). The Exchange would invoke the Closing Contingency Procedures only after it determines that the standard closing procedure is unavailable due to technical difficulties. The Exchange will employ internal testing procedures to determine the availability of each set of operating procedures, and thereby position itself to make and announce such a determination as rapidly as possible. The Exchange would invoke the Closing Contingency Procedures by announcing publicly that its market is impaired and unable to execute a closing auction. If the Exchange makes that announcement prior to 3:00 p.m., Eastern Standard Time ("EST"), the official closing price from the Exchange's designated back-up exchange would serve as the Exchange's Official Closing Price. If the Exchange makes that announcement after 3:00 p.m., EST, the Securities Information Processor ("SIP") would calculate a Volume Weighted Average Price ("VWAP"), described in more detail below. Whether the announcement is made before or after 3:00 p.m., EST, the SIP would publish the Exchange's Official Closing Price on the Exchange's behalf either: (1) based on a message from the Exchange's back-up exchange or (2) based on the VWAP calculation.

Designation of Back-Up

The Exchange proposes to designate NYSE Arca as its official back-up exchange. The Exchange believes that NYSE Arca is best positioned to serve as its back-up for two primary reasons: (1) NYSE Arca and the Exchange's membership substantially overlaps; (2) NYSE Arca

already operates an effective closing cross that it can use to execute a closing transaction in the Exchange's listed securities.⁶ In the event the Exchange is unable to execute a closing auction, the Exchange's members that are also NYSE Arca members should be technically prepared to transfer liquidity to NYSE Arca to ensure a deeply liquid closing transaction.

The Operating Committees for the CQ/CT and Nasdaq UTP Plans have already voted to modify the SIPs to support this proposal. Specifically, each exchange that is designated as a back-up exchange (Nasdaq and NYSE Arca), will disseminate via the SIPs an official closing price in every listed security marked with the .M sale condition code.

The SIPs will apply the following procedures:

1. Each primary listing exchange would print a standardized Official Closing Price ("OCP"), with a sale condition 'M,' in each security it trades as primary.
2. Each primary listing exchange would include in its rules that, in the event that it is impaired and cannot conduct a closing auction, the exchange's contingency OCP would be the OCP of a specified "back-up exchange" or, if the impairment is announced after 3:00 p.m., EST, a VWAP calculation.
3. In the event that a primary listing exchange publicly announces that it is impaired and unable to conduct a closing auction for all or a subset of its primary symbols, the SIP would print the primary listing exchange's contingency OCP as the OCP of the primary listing exchange, including calculation of the VWAP. The advantages of the SIP reprinting the contingency OCP as the OCP of the primary listing exchange,

⁶ The Exchange notes that quotations and executions for Exchange-listed securities are represented on Tape B, which is also where information regarding NYSE Arca and NYSE MKT listed securities is represented. The Exchange also notes that like the Exchange, NYSE Arca trades securities listed on all tapes (Tapes A, B and C), including securities listed on the Exchange.

rather than the back-up exchange separately sending to the SIP its OCP as the OCP of the primary exchange are that:

- a. The SIP provides a centralized service of which each primary listing exchange can take advantage
 - b. Participant – line validations are retained
 - c. There is assurance of full symbol coverage
 - d. The SIP provides a single location for future updates or configuration changes or new primary listing exchanges
 - e. A single source and method for VWAP calculations
4. The primary listing exchange's contingency OCP would differ depending on what time the impaired primary market announces that it will be using the closing contingency plan.
- a. If announced prior to 3:00 p.m., EST, the primary listing exchange's contingency OCP would be based on the following hierarchy:
 - i. Official Closing Price (sale condition 'M') of a pre-designated back-up exchange(s). An exchange that has more than 1 back-up exchange as part of its hierarchy of contingency OCPs, will announce publicly the exchange(s) that will be relied on for the contingency OCP.
 - ii. If no such contingency OCP exists, then a VWAP calculated by the SIP of the final 5 minute regular trading session. The VWAP calculations would include all last sale eligible trades in the last 5 minutes of the normal trading day, up to the time that the VWAP is processed. The VWAP would include the closing auctions prints of all

markets and would take into account any trade breaks or corrections up to the time the VWAP is processed. Because the VWAP would include any last-sale eligible trades, busts, or corrections that were reported up to the time that the SIP calculates the VWAP, the Exchange believes that the VWAP price would reflect any pricing adjustments that may be reported after 4:00 pm. EST.

- iii. If no last sale eligible trades are printed in the last 5 minutes of the normal trading day, then the consolidated last sale during regular trading hours.
 - iv. If no such same day consolidated last sale eligible trades exist, then the primary listing exchange's prior trading day's Official Closing Price.
 - v. If no Official Closing Price for a security can be determined under subsections (i), (ii), (iii), or (iv) above, the Exchange would not publish an Official Closing Price for such security.
- b. If announced after 3:00 p.m., EST, the primary listing exchange's contingency OCP would be determined by the following hierarchy:
- i. Final 5 minute VWAP of regular trading session (same calculation as described above).
 - ii. If no last sale eligible trades printed in the last 5 minutes of the normal trading day, then the consolidated last sale during regular trading hours.
 - iii. If no such same day consolidated last sale eligible trades exist, then the primary listing exchange's prior trading day's Official Closing Price.

- iv. If no Official Closing Price for a security can be determined under subsections (i), (ii), or (iii) above, the Exchange would not publish an Official Closing Price for such security.

Whenever the Exchange utilizes the Closing Contingency Procedures, it will cancel all open interest designated for the Exchange's close residing in its systems. This is designed to give members the opportunity to route their orders to alternative execution venues. Also, in all cases involving the Closing Contingency Procedures, after hours trading will begin at 4:00 p.m. EST or upon resolution of the disruption that triggered the use of these proposed procedures.

Because of the technology changes associated with this proposed rule change, the Exchange will implement the proposed back-up procedures for determining an Official Closing Price no later than 120 days after filing of this proposal and will announce the implementation of the procedures by issuing a Trade Desk Notice.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ 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 believes the proposed rule change will promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would provide transparency in how the Exchange

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

would determine the Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a closing auction due to a systems or technical issue. The Exchange believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed determination of the Exchange's Official Closing Price was crafted in response to input from industry participants and would:

- provide a pre-determined, consistent solution that would result in a closing print to the SIP within a reasonable time frame from the normal closing time;
- minimize the need for industry participants to modify their processing of data from the SIP; and
- provide advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.

More specifically, the Exchange believes the proposed hierarchy for determining the Exchange's Official Closing Price if the Exchange determines that it is impaired before 3:00 p.m., EST, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal, which is based on input from market participants, would provide sufficient time for market participants to direct closing-only interest to a designated alternate exchange in time for such interest to participate in a closing auction on such alternate venue in a meaningful manner.

The Exchange further believes that relying on the official closing price of a designated alternate exchange would provide for an established hierarchy for determining an Official Closing Price for an Exchange-listed security if there is insufficient interest to conduct a closing

auction on the alternate exchange. In such case, the rules of NYSE Arca and the Exchange already provide a mechanism for determining an official closing price for securities that trade on those markets.

The Exchange further believes that if the Exchange determines after 3:00 p.m., EST, that it is impaired and unable to conduct a closing auction, the proposed VWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a mechanism to determine the value of an affected security for purposes of determining the Exchange's Official Closing Price. By using a volume-weighted calculation that would include the closing transactions on an affected security on alternate exchanges as well as any busts or corrections that were reported up to the time that the SIP calculates the value, the Exchange believes that the proposed calculation would reflect the correct price of a security.

In addition, by using a VWAP calculation rather than the last consolidated last-sale eligible price as of the end of regular trading hours, the Exchange would reduce the potential for an anomalous trade that may not reflect the true price of a security from being set as the Exchange's Official Closing Price for a security.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would have minimal impact on market participants. As proposed, from the perspective of market participants, even if the Exchange were impaired, the SIP would publish an Official Closing Price for Exchange-listed securities on behalf of the Exchange in a manner that would be no different than if the Exchange were not impaired. If the Exchange determines that it is impaired after 3:00 p.m., EST, market participants would not have to make any system

changes. If the Exchange determines that it is impaired before 3:00 p.m., EST, and designates an alternate exchange, market participants may have to do systems work to re-direct closing-only orders to the alternate exchange. However, the Exchange understands, based on input from market participants, that such changes would be feasible based on the amount of advance notice. In addition, the Exchange believes that designating an alternate exchange when there is sufficient time to do so would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow for the price-discovery mechanism of a closing auction to be available for impacted Exchange-listed securities.

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 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 to provide for how the Exchange would determine an Official Closing Price for Exchange-listed securities if it is impaired and cannot conduct a closing auction due to a systems or technical issue. The proposal has been crafted with input from market participants, the Exchange, and the SIPs, and is designed to reduce the burden on competition by having similar back-up procedures across all primary listing exchanges if such exchange is impaired and cannot conduct a closing auction.

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: (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.⁹

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-2016-47 on the subject line.

Paper comments:

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

⁹ 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.

All submissions should refer to File Number SR-BatsBZX-2016-47. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2016-47, 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.¹⁰

Robert W. Errett
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).