

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77310; File No. SR-BATS-2016-27)

March 7, 2016

Self-Regulatory Organizations; Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.27(b), Compliance with Data Collection Requirements, Relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program

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 March 2, 2016, Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. (the “Exchange” or “BZX”) 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 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 filed a proposal to amend Exchange Rule 11.27(b) regarding the requirements for the collection and transmission of data pursuant to Appendices B and C of the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

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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).

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of BZX, BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc. ("CHX"), EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act<sup>5</sup> and Rule 608 of Regulation NMS thereunder,<sup>6</sup> the Plan to Implement a Tick Size Pilot Program ("Pilot").<sup>7</sup> The Participants filed the Plan to

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<sup>5</sup> 15 U.S.C. 78k-1.

<sup>6</sup> 17 CFR 242.608.

<sup>7</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

comply with an order issued by the Commission on June 24, 2014.<sup>8</sup> The Plan<sup>9</sup> was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.<sup>10</sup>

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require Members<sup>11</sup> to comply with the applicable data collection requirements of the Plan.<sup>12</sup>

The Pilot will include stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).<sup>13</sup> During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at

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<sup>8</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>9</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>10</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

<sup>11</sup> The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange. See Exchange Rule 1.5(n).

<sup>12</sup> The Exchange proposes to add Information and Policy .11 to Rule 11.27 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

<sup>13</sup> See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

the currently permitted increments. Pilot Securities in the first test group (“Test Group One”) will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.<sup>14</sup> Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.<sup>15</sup> Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.<sup>16</sup> In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS<sup>17</sup> will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (e.g., transaction costs by order size), execution quality (e.g., speed of order executions), market maker activity, competition between trading venues (e.g., routing frequency of market orders), transparency (e.g., choice between displayed and hidden orders), and market dynamics (e.g., rates and speed of order cancellations).<sup>18</sup> The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market

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<sup>14</sup> See Section VI(B) of the Plan.

<sup>15</sup> See Section VI(C) of the Plan.

<sup>16</sup> See Section VI(D) of the Plan.

<sup>17</sup> 17 CFR 242.611.

<sup>18</sup> See Approval Order, 80 FR at 27543.

marker profits and any corresponding changes in the liquidity of small-capitalization securities.<sup>19</sup>

#### Compliance with the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.<sup>20</sup> Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers<sup>21</sup> to submit variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, e.g., from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.<sup>22</sup> Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

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<sup>19</sup> Id.

<sup>20</sup> The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange separately proposes rules that would require compliance by its Members with the applicable quoting and trading requirements specified in the Plan, and has reserved Paragraph (a) for such rules. See Securities Exchange Act Release No. 76552 (December 3, 2015), 80 FR 76591 (December 9, 2015) (SR-BATS-2015-108)

<sup>21</sup> The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.600(b).

<sup>22</sup> 17 CFR 242.605.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer (“NBBO”) quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority (“DEA”) for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

On February 10, 2016, the Commission approved a proposed rule change by the Exchange to adopt Rule 11.27(b) which sets forth Member’s requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.<sup>23</sup>

#### Description of Proposed Changes to Rule 11.27(b)

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker<sup>24</sup> engaging in trading activity on a Trading Center operated by the Participant. Exchange Rule 11.27(b)(3)(A) provides that a Member that is a Market Maker shall collect and transmit to their DEA data

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<sup>23</sup> See Securities Exchange Act Release No. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (SR-BATS-2015-102).

<sup>24</sup> The Plan defines a Market Maker as “a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.”

relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T+4 for: (i) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data is to be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data is to be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data will contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

Exchange Rule 11.27(b)(4) sets forth the requirements for the collection and transmission

of data pursuant to Appendix C.I of the Plan. Rule 11.27(b)(4)(A) requires that a Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center. The rule also requires Members to provide such data in a format required by their DEA by 12 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

FINRA and CHX are Participants of the Plan and are to collect data relating to Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan on behalf of the Participants. For Trading Centers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.<sup>25</sup> CHX also adopted procedures to comply with the Plan's data collection requirements for Market Makers that CHX serves as DEA.<sup>26</sup>

FINRA and CHX serve as DEA for a large majority of Members. However, the Exchange understands that some Members that are Market Makers do not utilize FINRA or CHX as their DEA and have a DEA that is not a Participant to the Plan and, therefore, not subject to

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<sup>25</sup> FINRA members for which FINRA is their DEA should refer to the Tick Size OATS Data Specifications on the FINRA OATS website at <http://www.finra.org/industry/oats/> for detailed information and FAQs about the proposed specific OATS Tick Size reporting requirements.

<sup>26</sup> See Tick Size Pilot Program – CHX MM Transaction Data Technical Specifications, available at [http://www.chx.com/literature\\_143998/Tick\\_Size\\_Pilot\\_Program\\_-\\_CHX\\_MM\\_Transaction\\_Data\\_Technical\\_Specification](http://www.chx.com/literature_143998/Tick_Size_Pilot_Program_-_CHX_MM_Transaction_Data_Technical_Specification).



the Plan's data collection requirements. For example, the Chicago Board Options Exchange, Inc, ("CBOE") is not a Participant to the Plan and acts as DEA for a small portion of the Exchange's Members. In such case, a DEA that is not a Participant of the Plan would not be required to collect the required data and may not establish procedures for which Members it acts a DEA for to report the data required under subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 and in accordance with Item IV of Appendix B and Item I of Appendix C of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 11.27 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 11.27(b) to FINRA. The Exchange also proposes to adopt paragraph (b)(4)(B) of Rule 11.27 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (4)(A) of Rule 11.27(b) to FINRA.

The Exchange believes the proposed rule change is necessary to ensure that all of its Members are able to report the data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 in compliance with the Plan. As noted above, FINRA has established a process by which they are to collect data relating to Item IV of Appendix B and Item I of Appendix C of the Plan on behalf of the Participants for those Members that it serves as DEA.<sup>27</sup> The Exchange believes requiring Members who utilize a DEA that is not a Participant to the Plan to report data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 to FINRA would provide such Members a viable option to report such data required by the Plan.

Like data collected by a DEA that is a Participant, Market Makers would be required to transmit the data required by subparagraphs (b)(3)(A) and (b)(4)(A) of the Rule 11.27 in a format

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<sup>27</sup> See supra note 25.

required by FINRA by 12:00 p.m. EST on T+4 for: (i) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Lastly, the Exchange proposes to amend current Exchange Rule 11.27(b)(3)(B). Current Exchange Rule 11.27(b)(3)(B) provides that the Exchange shall transmit the data collected by the DEA pursuant to Rule 11.27(b)(3)(A) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. This subparagraph would be renumbered as Rule 11.27(b)(3)(C) and amended to include the data collected by FINRA pursuant to subparagraph (b)(3)(B) as part of the Exchange's submission to the SEC. The Exchange shall also make such data publicly available on the Exchange website on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

#### Implementation Date

The proposed rule change will be effective on April 4, 2016.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>28</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>29</sup> 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

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<sup>28</sup> 15 U.S.C. 78f(b).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

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 this proposal is consistent with the Act because it ensures all Members are able to report the data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 in compliance with the Plan. The Exchange believes requiring Members who utilize a DEA that is not a Participant to the Plan to report data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 to FINRA would provide such Members a viable option to report such data required by the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. In addition, ensuring that this data is properly reported by Trading Centers who's [sic] DEA is not a Participant of the Plan will facilitate the analysis of the effects of the Pilot on liquidity, execution quality, market maker activity, competition between trading venues, transparency, and market dynamics. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because it is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan as well as ensure Members are able to submit the required data in furtherance of compliance with the Plan.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change ensures all Members are able to report the data required by subparagraphs (b)(3)(A) and (b)(4)(A) of Rule 11.27 in compliance with the Plan and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan.

The Exchange also notes that the data collection requirements for Members that operate Trading Centers will apply equally to all such Members, as will the data collection requirements for Market Makers.

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

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 Act<sup>30</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>31</sup> 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 (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.

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 17 CFR 240.19b-4.

#### 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-BATS-2016-27 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-BATS-2016-27. 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-BATS-2016-27, 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>32</sup>

Robert W. Errett  
Deputy Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).