

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84670; File No. SR-BatsBZX-2017-34)

November 28, 2018

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 to Proposed Rule Change to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities under New Exchange Rule 11.28

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2018, the Bats BZX Exchange, Inc. (now known as Cboe BZX Exchange, Inc.) (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 2 to the proposed rule change as described in Item I below, which Item has been prepared by the Exchange and is reproduced below verbatim in Section I.

The proposed rule change seeks to adopt Cboe Market Close, a closing match process for non-BZX Listed Securities. On January 17, 2018, after consideration of the record for the proposed rule change, the Division of Trading and Markets, pursuant to delegated authority,³ approved the proposed rule change, as modified by Amendment No. 1 (“Approval Order”).⁴ On January 31, 2018, pursuant to Commission Rule of Practice 430,⁵ NYSE Group, Inc. (“NYSE”) and The Nasdaq Stock Market LLC (“Nasdaq”) each filed petitions for review of the Approval Order. Pursuant to Commission Rule of Practice 431(e), the Approval Order is stayed by the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 200.30 3(a)(12).

⁴ See Exchange Act Release No. 82522, 83 FR 3205 (January 23, 2018).

⁵ 17 CFR 201.430.

filing with the Commission of a notice of intention to petition for review.⁶ On March 1, 2018, the Commission issued a scheduling order, pursuant to Commission Rule of Practice 431, granting the petitions for review of the Approval Order and providing until March 22, 2018 for any party or other person to file a written statement in support of or in opposition to the Approval Order.⁷ In statements filed with the Commission, two parties stated, among other arguments, that Cboe Market Close would cause BZX to violate Rule 201 of Regulation SHO.⁸ BZX subsequently filed Amendment No. 2 to the proposed rule change to address this comment. Because of this change, the Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Amendment No. 2 to SR-BatsBZX-2017-34

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing this Partial Amendment No. 2 to SR-BatsBZX-2017-34, which was originally filed with the Securities and Exchange Commission (the “Commission”) on May 5, 2017 (the “Proposal”). The Proposal was published for comment in the Federal Register on May 22, 2017, and approved by the Division of Trading

⁶ 17 CFR 201.431(e). See Letter from Secretary of the Commission to Christopher Solgan, Assistant General Counsel, Cboe Global Markets, Inc., dated January 24, 2018 (providing notice of receipt of notices of intention to petition for review of delegated action and stay of order), available at <https://www.sec.gov/rules/sro/batsbzx/2018/sr-batsbzx-2017-34-letter-from-secretary-to-cboe.pdf>.

⁷ See Exchange Act Release No. 82794, 83 FR 9561 (March 6, 2018). On March 16, 2018, the Office of Secretary, acting by delegated authority, issued an order on behalf of the Commission granting a motion for an extension of time to file statements on or before April 12, 2018. See Exchange Act Release No. 82896, 83 FR 12633 (Mar. 22, 2018).

⁸ See NYSE Statement in Opposition to the Division’s Order Approving a Rule to Introduce Cboe Market Close, at 31 – 34 (April 12, 2018); Statement of the Nasdaq Stock Market LLC in Opposition to Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Introduce Cboe Market Close, at 26 (April 12, 2018).

and Markets pursuant to delegated authority on January 17, 2018.⁹ On January 24, 2018, the Commission stayed the Proposal,¹⁰ and the Proposal is currently pending Commission review.

The Proposal seeks to introduce the Cboe Market Close, an innovative closing match process for non-BZX Listed Securities that is designed to match buy and sell Market-On-Close (“MOC”) orders at the official closing price for such security published by the primary listing market. The Exchange proposed the Cboe Market Close in response to interest from market participants, particularly buy-side firms, who seek an alternative to participation on the primary listing market’s closing auction while still receiving an execution at the official closing price. The Exchange continues to believe that the proposed functionality promotes the maintenance of a free and open market because it would increase competition for order flow at the close, which is highly concentrated at the primary listing markets today, without impacting price discovery.

The purpose of this amendment is to amend the Proposal at Interpretations and Policies .04 to BZX Rule 11.28, which would be a new rule that provides for the handling of short sale MOC orders that are designated for participation in the Cboe Market Close. Specifically, the Exchange proposes to reject short sale MOC orders entered pursuant to BZX Rule 11.28 in order to comply with its obligations under Rule 201 of Regulation SHO.¹¹ MOC orders marked short exempt are not subject to the short sale circuit breaker restrictions under Regulation SHO, and would therefore be accepted for participation in the Cboe Market Close.

⁹ See Securities Exchange Act Release Nos. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (Notice); 82522 (January 7, 2018), 83 FR 3205 (January 23, 2017) (Approval Order) (SR-BatsBZX-2017-34).

¹⁰ See Letter from Secretary of the Commission to Christopher Solgan, Assistant General Counsel, Cboe Global Markets, Inc., dated January 24, 2018.

¹¹ 17 CFR 242.201.

19b-4 and Exhibit 1 Changes

1. The Exchange proposes to add the following sentences to the purpose section of the Proposal at the end of the first paragraph on page 8 of the 19b-4 and page 21 of the Exhibit 1:

All short sale MOC orders designated for participation in the Cboe Market Close must be identified as “short” or “short exempt” pursuant to Exchange Rule 11.19(a).¹² MOC orders marked short will be rejected so as to maintain compliance with the Exchange’s obligations under Rule 201 of Regulation SHO in the event a short sale circuit breaker is triggered and the official closing price determined by the primary listing market is not above the national best bid. MOC orders marked short exempt, which are not subject to short sale circuit breaker restrictions under Regulation SHO, will be accepted and processed in accordance with the proposed rules.

2. The Exchange proposes to add the following paragraphs to the basis section of the Proposal immediately prior to the Exchange’s statement on burden on competition on page 14 of the 19b-4 and page 28 of the Exhibit 1:

The Exchange also believes that the proposed language relating to short sale handling is consistent with the Act and the rules and regulations thereunder. Rules 201(b)(1)(i) and (ii) of Regulation SHO generally require that trading centers such as the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to: (i) prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid (“price restriction”) if the price of that covered security decreases by

¹² Exchange Rule 11.19(a) provides that all short sale orders shall be identified as “short” or “short exempt” when entered into the System.

10% or more from the covered security's closing price;¹³ and (ii) impose this price restriction for the remainder of the day and the following day.¹⁴

The Cboe Market Close contemplates the pairing of MOC orders at the MOC Cut-Off Time of 3:35 p.m. ET, and the ultimate execution of those orders at the official closing price determined by the closing auction of the primary listing market at 4:00 p.m. ET. As a result, it is possible that a short sale MOC order paired at the MOC Cut-off Time would not be eligible for execution at the ultimate execution price determined by the primary listing market when the closing auction is conducted. Should a short sale circuit breaker be triggered due to a 10% decline in the price of the security from the previous day's closing price, a short sale MOC order executed at 4 p.m. ET would be required to be executed above the national best bid. MOC orders paired in the Cboe Market Close, however, are entitled to an execution at the official closing price, which may be lower than, equal to, or above the national best bid. Thus, it is possible that the eventual execution of a short sale MOC order at 4 p.m. ET may violate the requirements of Rule 201(b)(1). Specifically, it would be a violation of Regulation SHO to execute a short sale MOC order at the official closing price if a short sale circuit breaker is triggered, either before or after the MOC Cut-off Time, and the official closing price is less than or equal to the national best bid.

To prevent this result and maintain compliance with Rule 201 of Regulation SHO, the Exchange is proposing to reject all short sale MOC orders that are designated for participation in the Cboe Market Close. Rejecting short sale MOC orders will ensure that the Exchange is able to

¹³ The closing price is as determined by the listing market for the covered security as of the end of regular trading hours on the prior day.

¹⁴ This price restriction applies when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.

execute the MOC orders that are accepted and paired at the MOC Cut-off Time as contemplated by the Cboe Market Close. Furthermore, rejecting these orders would ensure that market participants are provided an opportunity to enter any short interest on the primary listing market, which may be able to re-price such interest to a permitted price if a short sale circuit breaker has been triggered.¹⁵ The Exchange therefore believes that the proposed handling of short sale MOC orders is consistent with the protection of investors and the public interest.

In addition, Rule 201(b)(1)(iii)(B) of Regulation SHO provides that the Rule 201 policies and procedures described above must be reasonably designed to permit the execution or display of a short sale order of a covered security marked “short exempt” without regard to whether the order is at a price that is less than or equal to the current national best bid. As a result, MOC orders marked short exempt are not subject to the short sale price restrictions of Regulation SHO, and may be executed without regard to whether such execution is at a price that is less than or equal to the current national best bid. The Exchange therefore proposes to provide that orders marked short exempt will be accepted by the System. The Exchange will pair and execute these orders in the same manner as other MOC orders designated for participation in the Cboe Market Close.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

¹⁵ See e.g., New York Stock Exchange LLC Rule 7.16(f)(5)(A), which permits the re-pricing of short sale orders during the duration of the short sale circuit breaker.

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-2017-34 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-2017-34. 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 also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsBZX-2017-34, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Eduardo A. Aleman
Assistant Secretary