

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79312; File No. SR-BatsBZX-2016-75]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period for the Supplemental Competitive Liquidity Provider Program

November 15, 2016.

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 November 7, 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 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 pilot period for the Exchange’s Supplemental Competitive Liquidity Provider Program (the “Program”), which is currently set to expire on November 4, 2016 to expire on July 31, 2017.

The text of the proposed rule change is available at the Exchange’s Web site 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

##### Background

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of securities of issuers on the Exchange.<sup>3</sup> More recently, the Exchange received approval to operate a pilot program that is designed to incentivize certain Market Makers<sup>4</sup> registered with the Exchange as ETP CLPs, as defined in Interpretation and Policy .03 to Rule 11.8, to enhance liquidity on the Exchange in certain ETPs<sup>5</sup> listed on the Exchange and thereby qualify to receive part of a daily rebate as part of the Program under Interpretation and Policy .03 to Rule 11.8.<sup>6</sup>

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.<sup>7</sup> The Commission approved the Program on July 28, 2014.<sup>8</sup> The Exchange implemented the Program on July 28, 2014 and the pilot period for the Program was originally scheduled to end on July 28, 2015 until it was extended to end on October 28, 2015,<sup>9</sup> later extended to January 28, 2016,<sup>10</sup> again extended to April 28, 2016,<sup>11</sup> then again to July 28, 2016,<sup>12</sup> again to October 28, 2016,<sup>13</sup> and most recently to November 4, 2016.<sup>14</sup>

##### Proposal To Extend the Operation of the Program

The Exchange established the Program in order to enhance liquidity

<sup>3</sup> See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>4</sup> As defined in BZX Rules, the term “Market Maker” means a Member that acts as a market maker pursuant to Chapter XI of BZX Rules.

<sup>5</sup> ETP is defined in Interpretation and Policy .03(b)(4) to Rule 11.8.

<sup>6</sup> See Securities Exchange Act Release No. 72692 (July 28, 2014), 79 FR 44908 (August 1, 2014) (SR-BATS-2014-022) (“CLP Approval Order”).

<sup>7</sup> See *id.* at 44909.

<sup>8</sup> *Id.*

<sup>9</sup> See Securities Exchange Act Release No. 75518 (July 24, 2015), 80 FR 45566 (July 30, 2015) (SR-BATS-2015-55).

<sup>10</sup> See Securities Exchange Act Release No. 76293 (October 28, 2015), 80 FR 67808 (November 3, 2015) (SR-BATS-2015-96).

<sup>11</sup> See Securities Exchange Act Release No. 77033 (February 2, 2016), 81 FR 6558 (February 8, 2016) (SR-BATS-2016-12).

<sup>12</sup> See Securities Exchange Act Release No. 77721 (April 27, 2016), 81 FR 26591 (May 3, 2016) (SR-BatsBZX-2016-11).

<sup>13</sup> See Securities Exchange Act Release No. 78454 (August 2, 2016), 81 FR 52494 (August 8, 2016) (SR-BatsBZX-2016-46).

<sup>14</sup> See Securities Exchange Act Release No. 79222 (November 2, 2016) (SR-BatsBZX-2016-71).

on the Exchange in certain ETPs listed on the Exchange (and thereby enhance the Exchange’s ability to compete as a listing venue) by providing a mechanism by which ETP CLPs compete for part of a daily quoting incentive on the basis of providing the most aggressive quotes with the greatest amount of size. Such competition has the ability to reduce spreads, facilitate the price discovery process, and reduce costs for investors trading in such securities, thereby promoting capital formation and helping the Exchange to compete as a listing venue. The Exchange is proposing to extend the current pilot period for the Program from November 4, 2016 to July 31, 2017 in order to allow the Exchange to gather additional data related to the Program as the Program continues to operate.

Prior to the end of the pilot period ending July 31, 2017, the Exchange will post a report relating to the Program (the “Assessment Report”) on its Web site three months before the end of the pilot period or at the time it files to terminate the pilot, whichever comes first. The proposed Assessment Report would list the program objectives that are the focus of the pilot and, for each, provide (a) a statistical analysis that includes evidence that is sufficient to inform a reader about whether the program has met those objectives during the pilot period, along with (b) a narrative explanation of whether and how the evidence indicates the pilot has met the objective, including both strengths and weaknesses of the evidence in this regard. The Assessment Report also would include a discussion of (a) the procedures used in selecting any samples that are used in constructing tables or statistics for inclusion in the Assessment Report, (b) the definitions of any variables and statistics reported in the tables, including test statistics, (c) the statistical significance levels of any test statistics and (d) other statistical or qualitative information that may enhance the usefulness of the Assessment Report as a basis for evaluating the performance of the program. The Assessment Report would present statistics on product performance relative to the performance of comparable or other suitable benchmark products (including test statistics that permit the reader to evaluate the statistical significance of any differences reported or discussed in the report), along with information on the procedures that were used to identify those comparable or benchmark products, the characteristics of each comparable or benchmark products, the characteristics of each product that is

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

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

the focus of the pilot, the procedures used in selecting the time horizon of the sample and the sensitivity of reported statistics to changes in the time horizon of the sample.

As such, the Exchange believes that it is appropriate to extend the current operation of the Program in order to allow the Exchange to gather additional data related to the Program as the Program continues to operate and the Exchange prepares the Assessment Report. Through this filing, the Exchange seeks to extend the current pilot period of the Program until July 31, 2017.

## 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>15</sup> In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that extending the pilot period for the Program is consistent with these principles because the Program is reasonably designed to enhance quote competition, improve liquidity in securities listed on the Exchange, support the quality of price discovery, promote market transparency, and increase competition for listings and trade executions, while reducing spreads and transaction costs in such securities. Maintaining and increasing liquidity in Exchange-listed securities will help raise investors' confidence in the fairness of the market and their transactions. Further, the Exchange believes that extending the pilot period will allow the Exchange to gather additional data related to the Program as the Program continues to operate in order to better assess the effect of the Program on the public price discovery process and market structure generally as part of its preparation of the Assessment Report.

## 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 extends an established pilot period until July 31, 2017, thus allowing the Program to enhance competition in both the listings market and in competition for market makers. The Program will continue to promote competition in the listings market by providing issuers with a vehicle for paying the Exchange additional fees in exchange for incentivizing tighter spreads and deeper liquidity in listed securities and allow the Exchange to continue to compete with similar programs at Nasdaq Stock Market LLC<sup>17</sup> and NYSE Arca Equities, Inc.<sup>18</sup>

The Exchange also believes that extending the pilot period will allow the Program to continue to enhance competition among market participants by creating incentives for market makers to compete to make better quality markets. By continuing to require that market makers both meet the quoting requirements and also compete for the daily financial incentives, the quality of quotes on the Exchange will continue to improve. This, in turn, will attract more liquidity to the Exchange and further improve the quality of trading in exchange-listed securities participating in the Program, which will also act to bolster the Exchange's listing business.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from Members or other interested parties.

## 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>19</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>20</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative before 30 days from the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>21</sup> the Commission may 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. The Exchange asserts that waiver of the operative delay will allow the Exchange to extend the Program prior to its expiration on November 4, 2016, which will ensure that the Program continues to operate uninterrupted while the Exchange and the Commission continue to analyze data regarding the Program.<sup>22</sup> The Exchange represents that extending the pilot period will allow the Exchange to gather additional data related to the Program to better assess the effect of the Program on the public price discovery process and market structure, generally, as part of its preparation of the Assessment Report. According to the Exchange, prior to the end of the pilot period ending July 31, 2017, the Exchange will post the Assessment Report on its Web site three months before the end of the pilot period or at the time it files to terminate the pilot, whichever comes first. Based on these representations, the Commission believes that waiving 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 proposed rule change to be operative upon filing with the Commission.<sup>23</sup>

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4.

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>22</sup> The Commission notes that, on November 4, 2016, the Exchange filed a similar rule filing (SR-BatsBZX-2016-74) proposing to extend the Program to July 31, 2017. The Exchange withdrew that filing on November 7, 2016, and filed this proposed rule filing on the same day.

<sup>23</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR-NASDAQ-2012-137).

<sup>18</sup> See Securities Exchange Act Release No. 69335 (April 5, 2013), 78 FR 35340 (June 12, 2013) (SR-NYSEARCA-2013-34).

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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BatsBZX-2016-75 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 No. SR-BatsBZX-2016-75. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 will also 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 No. SR-BatsBZX-2016-75 and should be submitted on or before December 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79311; File No. SR-BOX-2016-45]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Order Approving a Proposed Rule Change To Amend the Treatment of Quotes To Provide That All Quotes on BOX Are Liquidity Adding Only

November 15, 2016.

#### I. Introduction

On September 13, 2016, BOX Options Exchange LLC ("BOX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the treatment of quotes to provide that all quotes on BOX are liquidity adding only. The proposed rule change was published for comment in the **Federal Register** on October 3, 2016.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend the treatment of incoming quotes to BOX so that they are only accepted if they are liquidity adding.<sup>4</sup> Under the Exchange's proposed rule change, if an incoming quote or quote update is marketable because it would execute against a resting order or quote on the BOX Book,<sup>5</sup> it will be rejected. The Exchange will not reject incoming quotes during

the opening of the market.<sup>6</sup> As is the case today, rejected quotes will not be considered when determining a Market Maker's quoting obligations.<sup>7</sup>

The Exchange also proposes to amend the treatment of incoming quotes after they interact with the Price Improvement Period ("PIP").<sup>8</sup> Currently, when an incoming quote is on the same side as a PIP Order, it may cause the PIP auction to end early, if, at the time of submission, the price of the incoming quote would cause an execution to occur prior to the end of the PIP.<sup>9</sup> Under the proposal, the incoming quote will continue to cause the PIP auction to end early if the conditions of Rule 7150(i) exist. However, after the PIP auction is concluded, if the incoming quote is executable against resting orders or quotes on the BOX Book, it will be rejected. Additionally, currently, when an incoming quote on the opposite side of the PIP Order is received such that it would cause an execution to occur prior to the end of the PIP auction, the incoming quote will be immediately

<sup>6</sup> Transactions occurring on the opening are deemed to neither add nor remove liquidity and therefore are exempt from the liquidity fees and credits on the Exchange. See Section II.C. of the BOX Fee Schedule.

<sup>7</sup> On a daily basis, a Market Maker must, during regular market hours, make markets and enter into any resulting transactions consistent with the applicable quoting requirements, such that on a daily basis a Market Maker must post valid quotes at least sixty percent (60%) of the time that the classes are open for trading. These obligations apply to all of the Market Maker's appointed classes collectively, rather than on a class-by-class basis. See Exchange Rule 8050(e); see also Exchange Rule 8040.

<sup>8</sup> Options Participants, both Order Flow Providers and Market Makers, executing agency orders may designate Market Orders and marketable limit Customer Orders for price improvement and submission to the PIP. Customer Orders designated for the PIP ("PIP Orders") shall be submitted to BOX with a matching contra order equal to the full size of the PIP Order. See Exchange Rule 7150.

<sup>9</sup> Specifically, the submission to BOX of a Market Order on the same side as a PIP Order will prematurely terminate the PIP when, at the time of the submission of the Market Order, the best Improvement Order is equal to or better than the NBBO on the same side of the market as the best Improvement Order. The submission to BOX of an executable Limit Order or generation of an executable Legging Order on the same side as a PIP Order will prematurely terminate the PIP if at the time of submission: (1) The Buy (Sell) Limit Order or Legging Order price is equal to or higher (lower) than the National Best Offer (Bid) and either: (i) The BOX Best Offer (Bid) is equal to the National Best Offer (Bid); or (ii) the BOX Best Offer (Bid) is higher (lower) than the National Best Offer (Bid) and the price of the best Improvement Order is equal to or lower (higher) than the National Best Offer (Bid); or (2) the Buy (Sell) Limit Order or Legging Order price is lower (higher) than the National Best Offer (Bid) and its limit price equals or crosses the price of the best Improvement Order. See Exchange Rule 7150(i).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 78946 (September 27, 2016), 81 FR 68069 (October 3, 2016) ("Notice").

<sup>4</sup> See Notice, *supra* note 3 (proposing a new IM-8050-3 to Exchange Rule 8050).

<sup>5</sup> The term "Central Order Book" or "BOX Book" means the electronic book of orders on each single option series maintained by the BOX Trading Host. See Exchange Rule 100(a)(10).

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).