

covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (*e.g.*, federal, state or local); and

(6) The contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

4. Applicant requests an order pursuant to section 206A and rule 206(4)–5(e), exempting it from the two-year prohibition on compensation imposed by rule 206(4)–5(a)(1) with respect to investment advisory services provided to the Client within the two-year period following the Contribution.

5. Applicant submits that the exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act. Applicant further submits that the other factors set forth in rule 206(4)–5(e) similarly weigh in favor of granting an exemption to the Applicant to avoid consequences disproportionate to the violation.

6. Applicant contends that given the nature of the Rule violation and the lack of any evidence that the Adviser or the Contributor intended to, or actually did, interfere with the Client's merit-based process for the selection or retention of advisory services, the interests of the Client are best served by allowing the Adviser and the Client to continue their relationship uninterrupted. Applicant states that causing the Adviser to serve without compensation for the remainder of the two year period could result in a financial loss that is more than 300 times the amount of the Contribution. Applicant suggests that the policy underlying the Rule is served by ensuring that no improper influence is exercised over investment decisions by governmental entities as a result of campaign contributions and not by withholding compensation as a result of unintentional violations.

7. Applicant represents that it had adopted and implemented the Policy which is fully compliant with, and more rigorous than, the Rule's requirements and that it had also implemented a political contribution questionnaire for all new employees, and performed compliance testing that included random searches of campaign contribution databases for the names of employees. Applicant notes that it was

this questionnaire that was effective in identifying the Contribution.

8. Applicant asserts that actual knowledge of the Contribution at the time of its making cannot be imputed to the Adviser, given that the Contributor was not an employee of the Adviser and had not yet participated in any of the discussions that would ultimately lead to his employment with the Adviser. Applicant represents that at no time did any employees of the Adviser other than the Contributor have any knowledge that the Contribution had been made prior to its discovery by the Adviser in October 2014 as part of its standard employee onboarding process.

9. Applicant asserts that after learning of the Contribution, the Adviser and the Contributor took all available steps to obtain a return of the Contribution and implement additional measures to prevent a future error, including modification of the new employee onboarding process to require the completion of the political contribution questionnaire before the Adviser's final decision to hire a new employee.

10. Applicant states that it informed the Contributor that he could have no contact with any representative of the Client other than potentially making substantive presentations to the Client's representatives and consultants about the investment strategy the Contributor manages in the event the Client requested a presentation of that strategy. The Contributor was directed to maintain a log of such interactions in accordance with the retention requirements set forth in Rule 204–2(e). Applicant further states that the Contributor ultimately had no contact with any representative of the Client and no contact with any member of the Client's board.

11. Applicant notes that it has had ongoing contacts with the Client that predate the Contributor's employment with the Adviser, and that the Contribution was consistent with the political affiliation of the Contributor and his wife. Applicant asserts that the Contributor also had a legitimate interest in the outcome of the campaign given that he and his family live in Illinois. Applicant also asserts that the Contributor's action in making a contribution that would later trigger a ban resulted from his lack of knowledge about the Rule's look-back provisions and, thus, his failure to appreciate the fact that the Contribution might impact potential future activities for an investment advisory firm.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**  
*Deputy Secretary.*

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BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78035; File No. SR–BatsBYX–2016–13]

### Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.23, Opening Process

June 10, 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 June 9, 2016, Bats BYX Exchange, Inc. (the “Exchange” or “BYX”) 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 filed a proposal to amend Rule 11.23, Opening Process, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading.

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

<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).

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

The Exchange proposes to amend Rule 11.23, Opening Process, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading.

Exchange Rule 11.23 describes the Exchange's current Opening and Re-Opening Process. Subparagraph (e) to Rule 11.23 states that while a security is subject to a halt, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process. Subparagraph (a) to Rule 11.23 states that, prior to the beginning of the Regular Trading Hours, Users<sup>5</sup> who wish to participate in the Opening Process may enter orders to buy or sell.<sup>6</sup> Subparagraph (a)(2) to Rule 11.23 provides that, with certain exceptions,<sup>7</sup> all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (e)(1) to Rule 11.23 states that the Re-Opening Process will occur in the same manner described in Rule

11.23(a)(2) and (b) described above,<sup>8</sup> also with certain exceptions.<sup>9</sup>

Subparagraph (e)(1) to Exchange Rule 11.23 also sets forth the process by which the System sets the price of the Re-Opening Process. Currently, the System<sup>10</sup> sets the price of the Re-Opening Process at the midpoint of the: (i) First NBBO subsequent to the first reported trade on the listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

The Exchange proposes to amend subparagraph (e)(1) to Rule 11.23 to now await a two-sided quotation from the listing exchange prior to opening a security for trading. As amended, subparagraph (e)(1) to Rule 11.23 would state that the System would set the price of the Re-Opening Process at the midpoint of the first NBBO subsequent to the first reported trade and first two-sided quotation on the listing exchange following the resumption of trading after a halt, suspension, or pause. The Exchange will utilize the current NBBO to calculate the security's re-opening price once a trade and two-sided quotation are received from the listing exchange, regardless of the order in which the trade or quotation are received. The Exchange believes the proposed rule change will enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so

would result in a re-opening price that more closely reflects the market prices and conditions for that security. Under subparagraph (e)(1) to Rule 11.23, the Exchange will continue to alternatively set the price of the Re-Opening Process at the midpoint of the NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</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 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, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Re-Opening Process at a price that is objectively established by the market for the security. The proposal would enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in a re-opening price that more closely reflect the market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes would accurately reflect the market for the security.

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

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enable the Exchange to incorporate the listing market's quotation into its calculation of the midpoint of the NBBO, resulting in a re-

<sup>8</sup> Subparagraph (b) to Rule 11.23 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer ("NBBO"). Furthermore, subparagraph (b) of Rule 11.23 also states that all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the BYX Book, cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.13(a)(2).

<sup>9</sup> Orders without a time-in-force instruction of Regular Hours Only are eligible to participate in the Re-Opening Process, but IOC, FOK, BYX Post Only Orders, and Minimum Quantity Orders will be cancelled or rejected, as applicable, and any ISO that is not IOC or FOK will be converted into a non-ISO and be queued for participation in the Re-Opening Process. See Exchange Rule 11.23(e)(1).

<sup>10</sup> See Exchange Rule 1.5(aa).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> See Exchange Rule 1.5(cc).

<sup>6</sup> Orders cancelled prior to the Opening Process will not participate in the Opening Process.

<sup>7</sup> The following order types and instruction may not participate in the opening process: BYX Post Only Orders, ISOs not modified by Rule 11.23(a)(1) above, and Minimum Quantity Orders. See Exchange Rule 11.23(a)(2). Limit orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Discretionary Orders may participate only up to their ranked price for buy orders or down to their ranked price for sell orders. *Id.* The discretionary range of such orders will not be eligible for participation in the Opening Process. *Id.* All Pegged Orders and Mid-Point Peg Orders, as defined in Rule 11.9(c)(8) and (9), will be eligible for execution in the Opening Process based on their pegged prices. *Id.*

opening price that would more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change will promote competition by enhancing the quality of the Exchange's opening process.

*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 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<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>15</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>16</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 30-day operative delay would allow market participants to immediately realize the benefits of what may be more accurate re-opening prices. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>17</sup>

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 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.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</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).

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 change 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BatsBYX-2016-13 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-BatsBYX-2016-13. 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 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 No. SR-BatsBYX-2016-13, and should be submitted on or before July 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-78034; File No. SR-BatsBZX-2016-25]

**Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Opening Process for Non-BZX-Listed Securities**

June 10, 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 June 9, 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 to amend Rule 11.24, Opening Process for Non-BZX-Listed Securities, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by

<sup>18</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> 15 U.S.C. 78s(b)(3)(A).

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