enabling order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) of the Act 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. Please include File Number SR–NYSE–2016–29 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.

All submissions should refer to File Number SR–NYSE–2016–29. 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 Number SR–NYSE–2016–29 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.19

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016–08941 Filed 4–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77602; File No. SR-
BatsBYX–2016–03]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 8.17 To Provide a Process for an Expedited Suspension Proceeding and Rule 12.15 To Prohibit Layering and Spoofing

April 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on March 31, 2016, Bats BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“SEC” or “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 adopt a new rule to clearly prohibit disruptive quoting and trading activity on the Exchange, as further described below. Further, the Exchange proposes to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule.

The text of the proposed rule change is available at the Exchange’s Web site 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
Introduction

The Exchange is filing this proposal to adopt a new rule to clearly prohibit disruptive quoting and trading activity on the Exchange and to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule. The proposal is identical to the proposal of Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. (“BZX”), which was recently approved by the Commission.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, the Act, the rules and regulations thereunder, and the Exchange’s Rules. Further, the Exchange’s Rules are required to be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade. . . . and, in general, to protect investors and the public interest.” In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is both operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority (“FINRA”) pursuant to a Regulatory Services Agreement (“RSA”). When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Member or Members involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period is generally necessary and appropriate to afford the subject Member adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.

In recent years, several cases have been brought and resolved by an affiliate of the Exchange and other SROs that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In such cases, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering or spoofing. An affiliate of the Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, in accordance with Exchange Rules and the Act, the Members responsible for such conduct or responsible for their customers’ conduct were allowed to continue the disruptive quoting and trading activity during the entirety of the subsequent lengthy investigation and enforcement process. The Exchange believes that it should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if a Member is engaging in or facilitating disruptive quoting and trading activity and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The following two examples are instructive on the Exchange’s rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities Inc. (the “Firm”) and its CEO were barred from the industry for, among other things, supervisory violations related to a failure by the Firm to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations. The Firm’s sole business was to provide trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by the Firm to U.S. markets originated directly or indirectly from foreign clients of the Firm. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and FINRA and other SROs identified clear patterns of the behavior in 2007 and 2008. Although the Firm and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, the Firm took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.


3 The Exchange notes that the membership of the Exchange and the membership of BZX is nearly identical. BZX members and the public had the opportunity to comment—and did comment—on an identical BZX proposal to the current proposal before the Staff approved the BZX proposal. See https://www.sec.gov/comments/sr-bats-2015-101/bats2015101.shtml.


7 “Layering” is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

8 “Spoofing” is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some
action to bar the Firm and its CEO from the
industry was not concluded until
2012, four years after the disruptive
and allegedly manipulative trading activity
was first identified.

In September of 2012, Hold Brothers
On-Line Investment Services, Inc. (the
“Firm”) settled a regulatory action in
connection with the Firm’s provision of
a trading platform, trade software and
trade execution, support and clearing
services for day traders. Many traders
using the Firm’s services were located
in foreign jurisdictions. The Firm
ultimately settled the action with
FINRA and several exchanges for a total
monetary fine of $3.4 million. In a
separate action, the Firm settled with
the Commission for a monetary fine of
$2.5 million. Among the alleged
violations in the case were disruptive
and allegedly manipulative quoting and
trading activity, including spoofing,
layering, wash trading, and pre-arranged
trading. Through its conduct and
insufficient procedures and controls, the
Firm also allegedly committed anti-
money laundering violations by failing
to detect and report manipulative and
suspicious trading activity. The Firm
was alleged to have not only provided
foreign traders with access to the U.S.
maintain in such activities, but
that its principals also owned and
funded foreign subsidiaries that engaged
in the disruptive and allegedly
manipulative quoting and trading
activity. Although the pattern of
manipulative quoting and trading activity
was identified in 2009, as noted above, the
enforcement action was not concluded
until 2012. Thus, although disruptive
and allegedly manipulative quoting and trading was promptly detected, it
continued for several years.

The Exchange also notes the current
criminal proceedings that have
commenced against Navinder Singh
Sarao. Mr. Sarao’s allegedly
manipulative trading activity, which
included forms of layering and spoofing
in the futures markets, has been linked
to effects of the disruption to the market.

Rule 8.17—Expedited Client Suspension
Proceeding

The Exchange proposes to adopt new
Rule 8.17 to set forth procedures for
issuing suspension orders, immediately
prohibiting a Member from conducting
continued disruptive quoting and
trading activity on the Exchange.

Importantly, these procedures would
also provide the Exchange the
to order a Member to cease and desist
from providing access to the Exchange
to a client of the Member that is
conducting disruptive quoting and
trading activity in violation of proposed
Rule 12.15.

Under proposed paragraph (a) of Rule
8.17, with the prior written
authorization of the Chief Regulatory
Officer (“CRO”) or such other senior
officers as the CRO may designate, the
Office of General Counsel or Regulatory
Department of the Exchange (such
departments generally referred to as the
“Exchange” for purposes of proposed
Rule 8.17) may initiate an expedited
suspenion proceeding with respect to
alleged violations of Rule 12.15, which
is proposed as part of this filing and
described in detail below. Proposed
paragraph (a) would also set forth the
requirements for notice and service of
such notice pursuant to the Rule,
including the required method of
service and the content of notice.

Proposed paragraph (b) of Rule 8.17
would govern the appointment of a
Hearing Panel as well as potential
disqualification or recusal of Hearing
Officers. The proposed provision is
consistent with existing Exchange Rule
8.6 and includes the requirement for a
Hearing Officer to be recused in the
event he or she has a conflict of interest
or bias or other circumstances exist
where his or her fairness might
reasonably be questioned. In addition to
recusal initiated by such a Hearing
Officer, a party to the proceeding will be
permitted to file a motion to disqualify
a Hearing Officer. However, due to the
compressed schedule pursuant to which
the process would operate under Rule
8.17, the proposed rule would require
such motion to be filed no later than 5
days after the announcement of the
Hearing Panel and the Exchange’s brief
in opposition to such motion would be
required to be filed no later than 5 days
after service thereof. Pursuant to
existing Rule 8.6(b), if the Hearing Panel
believes the Respondent has provided
satisfactory evidence in support of the
motion to disqualify, the applicable
Hearing Officer shall remove himself or
herself and request the Chief Executive
Officer to reassign the hearing to
another Hearing Officer such that the
Hearing Panel still meets the
compositional requirements described
in Rule 8.6(a). If the Hearing Panel
determines that the Respondent’s
grounds for disqualification are
insufficient, it shall deny the
Respondent’s motion for
disqualification by setting forth the
reasons for the denial in writing and the
Hearing Panel will proceed with the
hearing.

Under paragraph (c) of the proposed
Rule, the hearing would be held not
later than 15 days after service of the
notice initiating the suspension
proceeding, unless otherwise extended
by the Chairman of the Hearing Panel
with the consent of the Parties for good
cause shown. In the event of a recusal
or disqualification of a Hearing Officer,
the hearing shall be held not later than
five days after a replacement Hearing
Officer is appointed. Proposed
paragraph (c) would also govern how
the hearing is conducted, including the
authority of Hearing Officers, witnesses,
additional information that may be
required by the Hearing Panel, the
requirement that a transcript of the
proceeding be created and details
related to such transcript, and details
regarding the creation and maintenance
of the record of the proceeding.

Proposed paragraph (c) would also state
that if a Respondent fails to appear at a
hearing for which it has notice, the
allegations in the notice and
accompanying declaration may be
deeded admitted, and the Hearing
Panel may issue a suspension order
without further proceedings. Finally, as
proposed, if the Exchange fails to appear
at a hearing for which it has notice, the
Hearing Panel may order that the
suspenion proceeding be dismissed.

Under paragraph (d) of the proposed
Rule, the Hearing Panel would be
authorized to issue a written decision
stating whether a suspension order
would be imposed. The Hearing Panel
would be required to issue the decision
not later than 10 days after receipt of the
hearing transcript, unless otherwise
extended by the Chairman of the
Hearing Panel with the consent of the
Parties for good cause shown. The Rule
would state that a suspension order
shall be imposed if the Hearing Panel
finds by a preponderance of the
evidence that the alleged violation
specified in the notice has occurred and
that the violations conduct or
continuation thereof is likely to result in
significant market disruption or other
significant harm to investors.

Proposed paragraph (d) would also
describe the content and form of a
suspension order. As proposed, a
suspension order shall be limited to

ordering a Respondent to cease and desist from violating proposed Rule 12.15, and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 12.15. Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refused from. Finally, the order shall include the date and hour of its issuance. As proposed, a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below. Finally, paragraph (d) would require service of the Hearing Panel’s decision and any suspension order consistent with other portions of the proposed rule related to service.

Proposed paragraph (e) of Rule 8.17 would state that at any time after the Office of Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) of Rule 8.17 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Finally, proposed paragraph (f) would provide that sanctions issued under the proposed Rule 8.17 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Rule 12.15—Disruptive Quoting and Trading Activity Prohibited

The Exchange currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rule 3.1. The Exchange proposes to adopt new Rule 12.15, which more specifically define and prohibit disruptive quoting and trading activity on the Exchange. As noted above, the Exchange also proposes to apply the proposed suspension rules to proposed Rule 12.15.

Proposed Rule 12.15 would prohibit Members from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Interpretation and Policies .01 and .02 of the Rule, including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers.

To provide proper context for the situations in which the Exchange proposes to utilize its proposed authority, the Exchange believes it is necessary to describe the types of disruptive quoting and trading activity that would cause the Exchange to use its authority. Accordingly, the Exchange proposes to adopt Interpretation and Policy .01 and .02, providing additional details regarding disruptive quoting and trading activity. Proposed Interpretation and Policy .01(a), which describes disruptive quoting and trading activity containing many of the elements indicative of layering, would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (a) A party enters multiple limit orders on one side of the market at various price levels (the “Displayed Orders”); and (b) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and (c) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the “Contra-Side Orders”) that are subsequently executed; and (d) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders. Proposed Interpretation and Policy .01(b), which describes disruptive quoting and trading activity containing many of the elements indicative of spoofing, would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (a) A party narrows the spread for a security by placing an order inside the national best bid or offer; and (b) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in (a) that narrowed the spread. The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above. The Exchange further believes that the proposed descriptions will provide Members with clear descriptions of disruptive quoting and trading activity that will help them to avoid engaging in such activities or allowing their clients to engage in such activities.

The Exchange proposes to make clear in Interpretation and Policy .02 that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the rule to apply. For instance, with respect to the pattern defined in proposed Interpretation and Policy .01(a) it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders. The Exchange also proposes to make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by
spreading their activity amongst various execution venues.

In sum, proposed Rule 12.15 coupled with proposed Rule 8.17 would provide the Exchange with authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange. Below is an example of how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive quoting and trading activity. After an initial investigation the Exchange would then contact the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity then the Exchange would issue an expedited suspension proceeding by serving notice on the Member that would include details regarding the alleged violations as well as the proposed sanction. In such a case the proposed sanction would likely be to order the Member to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such Member unless and until such action is taken. The Member would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding. If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the Member to cease providing access to the client at issue and suspending such Member unless and until such action is taken. If such Member wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, such Member could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange’s ability to further investigate the matter and/or later sanction the Member pursuant to the Exchange’s standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.12

The Exchange reiterates that it already has broad authority to take action against a Member in the event that such Member is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent cases like the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have the authority to promptly initiate expedited suspension proceedings against any Member who has demonstrated a clear pattern or practice of disruptive quoting and trading activity, as described above, and to take action including ordering such Member to cease providing access to the Exchange to one or more of such Member’s clients if such clients are responsible for the activity. The Exchange recognizes that its proposed authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the proposed rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the Exchange believes that it would use this authority in limited circumstances, when necessary to protect investors, other Members, and the Exchange. Further, the Exchange believes that the proposed expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive quoting and trading activity.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act13 and further the objectives of Section 6(b)(5) of the Act14 because they are 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 regulating 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. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of Rule 12.15 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,15 which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange’s ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other Members and their customers as well as the Exchange if conduct is allowed to continue on the Exchange. As explained above, the Exchange notes that it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing16 to eliminate an express intent element that would not be proven on an
expedited basis and would instead require a thorough investigation into the activity. As noted throughout this filing, the Exchange believes it is necessary for the protection of investors to make such modifications in order to adopt an expedited process rather than allowing disruptive quoting and trading activity to occur for several years. Through this proposal, the Exchange does not intend to modify the definitions of spoofing and layering that have generally been used by the Exchange and other regulators in connection with actions like those cited above.

The Exchange further believes that the proposal is consistent with Section 6(b)(7) of the Act, which requires that the rules of an exchange “provide a fair procedure for the disciplining of members and persons associated with persons . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.” Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act, which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within proposed Rule 8.17. Importantly, as noted above, the Exchange anticipates using the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other Members and the Exchange, and even in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

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

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on their market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other Members and the Exchange.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(6) thereunder. 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change file under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii), 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 so that the proposed rule change may become operative immediately. The Exchange asserts that the waiver of the 30-day operative delay will allow the Exchange to immediately enforce the proposed rules to protect its members and market participants from the behavior proscribed by the proposed rules. The Exchange further states that

waiver of the operative delay is consistent with the protection of investors and the public interest because it is designed to protect investors and the public from disruptive quoting and trading activity. Furthermore, the Commission notes that it recently approved an identical expedited disciplinary procedure for an affiliate of the Exchange, BatsBZX, and the Exchange represents above that the membership of the Exchange and the membership of BatsBZX is nearly identical. Based on the foregoing, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.

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. Please include File Number SR–BatsBYX–2016–03 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–BatsBYX–2016–03. This file number should be included on the subject line if email is used. To help the

---

25 Since supra, Error! Bookmark not defined..
26 See supra, Error! Bookmark not defined.
27 For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f)
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 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-BatsBYX-2016–03, and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.28

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016–08940 Filed 4–18–16; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Aptus Capital Advisors, LLC, et al.; Notice of Application

April 13, 2016.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(s) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(I) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) a series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: Aptus Capital Advisors, LLC ("Initial Adviser"), ETF Series Solutions ("Trust") and Quasar Distributors, LLC ("Quasar").

FILING DATES: The application was filed on January 20, 2016, and amended on March 23, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 9, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Initial Adviser: 407 Johnson Ave., Fairhope, AL 36532; the Trust and Quasar: 615 East Michigan Street, 4th Floor, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, at (202) 551–6812, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at http://www.sec.gov/search/search.htm or by calling (202) 551–8090.

Applicants’ Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as a series open-end management investment company. Each series will operate as an exchange traded fund ("ETF").

2. The Initial Adviser will be the investment adviser to the new series of the Trust ("Initial Fund"). Each Adviser (as defined below) will be registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a “Sub-Adviser”). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors. Each distributor for a Fund will be a broker-dealer ("Broker") registered under the Securities Exchange Act of 1934 ("Exchange Act") and will act as distributor and principal underwriter ("Distributor") for one or more of the Funds. No Distributor will be affiliated with any national securities exchange, as defined in Section 2(a)(26) of the Act ("Exchange"). The Distributor for each Fund will comply with the terms and conditions of the requested order. Quasar, a Delaware limited liability company and broker-dealer registered under the Exchange Act, will act as the initial Distributor of the Funds.

4. Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future ("Future Funds" and together with the Initial Fund, “Funds”), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an “Underlying Index”). Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an “Adviser”) and