

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80580; File No. SR–BatsBZX–2017–25]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.22, Data Products, To Adopt a New Market Data Product Known as the ETF Implied Liquidity Feed

May 3, 2017.

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 April 28, 2017, Bats BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b–4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.22, Data Products, to adopt a new market data product known as the ETF Implied Liquidity feed.

The text of the proposed rule change is available at the Exchange’s Web site at [www.bats.com](http://www.bats.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

The Exchange proposes to amend Rule 11.22, Data Products, to adopt a new market data product known as the ETF Implied Liquidity feed. The ETF Implied Liquidity feed would be an optional data feed that would provide the Exchange’s proprietary calculation of the implied liquidity and the aggregate best bid and offer (“BBO”) of all displayed orders on the Exchange and its affiliated exchanges<sup>5</sup> for all standard, non-leveraged U.S. equity Exchange Traded Funds (“ETFs”) traded on the System.<sup>6</sup> An ETF’s implied liquidity disseminated via the proposed feed would consist of the ETF’s implied BBO (including the implied size) calculated via a proprietary methodology based on the national best bid and offer (“NBBO”), the number of shares of securities underlying one creation unit of the ETF, and the estimated cash included in one creation unit of the ETF. The Exchange will disseminate the aggregate BBO through the ETF Implied Liquidity feed no earlier than it provides its BBO to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The ETF Implied Liquidity feed would provide market participants with an additional price discovery tool that would assist in trading of standard, non-leveraged U.S. equity ETFs and their underlying securities. The Exchange’s calculation of the ETF’s implied liquidity via the ETF Implied Liquidity feed would provide a more granular measure of an ETF’s intraday indicative value (“IIV”, also commonly referred to as intraday net asset value (“iNAV”)) by incorporating the NBBO and its size along with other data elements described above. This enhanced measure of implied liquidity can provide market participants with a more complete picture of the liquidity available for an ETF based on its underlying securities.

As ETFs trade similar to stocks throughout the day, the IIV of the ETF can fluctuate with the prices of the underlying securities intraday. For this reason, ETF issuers are required to

publish an IIV for the ETF during the trading day which provides a snapshot estimate of the value of the ETF based on the last sale for the underlying securities. The IIV is generally calculated and disseminated periodically intraday by summing the last sale of all of the ETF’s underlying securities divided by the number of shares outstanding.<sup>7</sup> This current calculation of IIV is designed to provide investors with a reasonable estimate of the value of the ETF. However, this calculation of IIV provides a single value that does not include size or account for an ETF trading at a premium or discount to the IIV. For one, current IIV calculations do not consider the liquidity of the ETF or underlying securities so traded prices may differ from the theoretical snapshot due to bid/ask spreads and/or market impact. Although arbitrage activity between the ETF and its underlying securities tends to keep the traded price very close to IIV, there may still be variations. Therefore, the Exchange proposes to calculate on a real-time basis a more granular and enhanced measure of IIV by incorporating the following data points for each ETF into its proprietary calculation of the ETF’s implied liquidity: the NBBO (including size), the number of shares of securities underlying one creation unit of the ETF, and the estimated cash included in one creation unit of the ETF.<sup>8</sup> The Exchange’s calculation of the ETF’s implied liquidity would provide additional data than what is currently provided via the ETF’s IIV calculation of a single value, such as the implied best bid, the implied best offer and their implied sizes.

The Exchange believes providing the implied bid and the implied offer based on the ETF’s underlying basket of securities can provide investors with even more insight into the true value of the ETF than the current calculation of IIV (or iNAV). The Exchange also notes that many market participants today calculate and provide to their customers

<sup>7</sup> See *Understanding Net Asset Value*, available at <http://www.etf.com/etf-education-center/21025-understanding-net-asset-value.html> (last visited February 21, 2017).

<sup>8</sup> The Exchange intends to include a disclaimer as part of the proposed ETF Implied Liquidity feed that would alert subscribers that the Exchange’s calculation of the ETF’s implied liquidity may differ from the fund’s calculation of IIV or iNAV and does not account for potential creation or redemption fees associated with trading in the ETF’s underlying basket of securities. In addition, the Exchange’s calculation of the ETF’s implied liquidity is an enhanced version of an ETF’s NAV that is calculated and disseminated intra-day and is not intended to be confused with the ETF’s end of day calculation of the ETF’s NAV which consists of a single value.

<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).

<sup>5</sup> The Exchange’s affiliates are Bats EDGA Exchange, Inc. (“EDGA”), Bats EDGX Exchange, Inc. (“EDGX”), and Bats BYX Exchange, Inc. (“BYX”) (“collectively, the “Bats Exchanges”).

<sup>6</sup> The securities underlying each of the U.S. equity ETFs included in the proposed feed must be considered NMS Securities as defined under Rule 600(b)(46) of Regulation NMS. 17 CFR 242.600(b)(46).

IIV for ETFs in which they make markets. The proposed ETF Implied Liquidity feed could serve to assist these market participants in developing and verifying their own IIV calculations provided to customers.

The Exchange intends to file a separate rule change with the Commission proposing fees to be charged for the ETF Implied Liquidity feed. The Exchange anticipates offering the ETF Implied Liquidity feed on the date of effectiveness of the rule filing to establish those fees.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the ETF Implied Liquidity feed. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in improved, more granular calculations of an ETF's implied liquidity as provided by the proposed feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act<sup>11</sup> in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors. The ETF Implied Liquidity feed would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly,

distributors and subscribers can discontinue their use at any time and for any reason. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,<sup>12</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.<sup>13</sup>

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In addition, the proposed ETF Implied Liquidity feed promotes just and equitable principles of trade by providing market participants with an additional price discovery tool that would assist in trading of standard, non-leveraged U.S. equity ETFs and their underlying securities. As stated above, the proposed feed would provide investors with even more insight into the true value of the ETF than the current calculations of IIV (or iNAV) by incorporating the NBBO and its size along with other data elements described above. The proposed calculation of an ETF's implied

liquidity via the proposed ETF Implied Liquidity feed can provide market participants with a more complete picture of the liquidity available for an ETF based on its underlying securities. The proposed ETF Implied Liquidity feed could also serve to assist market participants in their own IIV (or iNAV) calculations that they provide to customers for ETFs in which they make markets. Therefore, the Exchange believes the proposed feed promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system.

Lastly, the ETF Implied Liquidity feed removes impediments to and perfects the mechanism of a free and open market and a national market system by providing investors with alternative market data and competing with similar market data products currently offered by the Nasdaq Stock Market LLC (“Nasdaq”).<sup>14</sup> The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.<sup>15</sup>

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>16</sup> The

<sup>14</sup> See Nasdaq's Global Index Data Service (“GIDS”) available at <http://business.nasdaq.com/intel/indexes/index-data/index.html#!/tcm:5044-12151> (providing on a real-time basis intraday portfolio values, daily valuation information, such as NAV per Share, estimated cash per Share, estimated cash per creation unit, total cash per creation unit and total shares outstanding of the fund and ETF directory messages designed to provide the symbols of the ETF valuations). See footnote 28 of Securities Exchange Act Release No. 77714 (April 26, 2016), 81 FR 26281 (May 2, 2016) (describing Nasdaq's GIDS within the order approving SR-Nasdaq-2016-028). See also footnote 29 of Securities Exchange Act Release No. 78592 (August 16, 2016), 81 FR 56729 (August 22, 2016) (describing Nasdaq's GIDS within the order approving SR-Nasdaq-2016-061). See, e.g., the NYSE Arca, Inc.'s (“NYSE Arca”) EOD ETF Report available at <http://www.nyxdata.com/Data-Products/NYSE-Arca-EOD-ETF-Report> (providing information such as the ETF's closing trades and quotes at different key points during the trading day, as well referential information such as shares outstanding, the primary market, and NAV).

<sup>15</sup> See Regulation NMS Adopting Release, *supra* note 13.

<sup>16</sup> The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO for securities traded on each of the Bats Exchanges. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the “Bats One Summary Feed”). See Exchange Rule 11.22(j). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-

<sup>12</sup> See 17 CFR 242.603.

<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04) (“Regulation NMS Adopting Release”).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78k-1.

Exchange believes that the proposal will promote competition by enabling the Exchange to offer a market data product similar to that currently offered by Nasdaq and NYSE Arca.<sup>17</sup> Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges.

*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 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>18</sup> and paragraph (f)(6) of Rule 19b-

BYX-2014-030) (Notice of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order"). The Exchange would provide the aggregate BBO disseminated via the Bats One Summary Feed as part of the ETF Implied Liquidity feed. The Exchange utilizes the following data feeds to create the Bats One Summary Feed's aggregated BBO, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX PITCH Feed, and BZX PITCH Feed. Rather than these depth-of-book feeds, the Exchange notes that a vendor seeking to build a competing product to the proposed ETF Implied Liquidity feed could simply utilize the top-of-book data feeds from each of the Bats Exchange's to create an aggregated BBO. These top-of-book feeds are EDGA Top, EDGX Top, BYX Top and BZX Top. The Exchange represents that a competing vendor could obtain these top-of-book data feeds from each of the Bats Exchanges on the same latency basis as the system that performs the aggregation and consolidation of the Bats One Summary Feed. See Bats One Approval Order. While the proposed ETF Implied Liquidity feed does not separately provide the ETF's NBBO, the number of shares of securities underlying one creation unit of the ETF, or the estimated cash included in one creation unit of the ETF, a vendor could obtain this information from the securities information processors and other publicly available sources to perform its own calculation of an ETF's implied liquidity to include as part of a competing product. Therefore, a vendor could create a product to compete with the proposed ETF Implied Liquidity feed on the same terms as the Exchange. With regard to cost, as stated above, the Exchange will file a separate rule filing with the Commission to establish fees for the ETF Implied Liquidity feed that would be designed to ensure that vendors could compete with the Exchange by creating a similar product.

<sup>17</sup> See *supra* note 14.

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

4 thereunder,<sup>19</sup> the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**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 Number SR-BatsBZX-2017-25 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-BatsBZX-2017-25. 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-BatsBZX-2017-25 and should be submitted on or before May 30, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80581; File No. SR-Phlx-2017-04]

**Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Permit the Listing and Trading of P.M.-Settled NASDAQ-100 Index® Options on a Pilot Basis**

May 3, 2017.

**I. Introduction**

On January 18, 2017, NASDAQ PHLX LLC ("Phlx" 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 permit the listing and trading of P.M.-settled NASDAQ-100 Index® ("NASDAQ-100") options on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on February 3, 2017.<sup>3</sup> On March 14, 2017, the Commission extended the time period within which to approve the proposed rule change,

<sup>20</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. 79894 (January 30, 2017), 82 FR 9259 ("Notice").

<sup>19</sup> 17 CFR 240.19b-4.