

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79222; File No. SR-BatsBZX-2016-71]

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

November 2, 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 October 28, 2016, Bats BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to extend the pilot period for the Exchange’s Supplemental Competitive Liquidity Provider Program (the “Program”), which is currently set to expire on October 28, 2016, to expire on November 4, 2016.

The text of the proposed rule change is available at the Exchange’s Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

##### Background

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

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

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

The Exchange established the Program in order to enhance liquidity on the Exchange in certain ETPs listed

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

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

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

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

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

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

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

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

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

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

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

on the Exchange (and thereby enhance the Exchange’s ability to compete as a listing venue) by providing a mechanism by which ETP CLPs compete for part of a daily quoting incentive on the basis of providing the most aggressive quotes with the greatest amount of size. Such competition has the ability to reduce spreads, facilitate the price discovery process, and reduce costs for investors trading in such securities, thereby promoting capital formation and helping the Exchange to compete as a listing venue. As such, the Exchange believes that it is appropriate to extend the current operation of the Program. Through this filing, the Exchange seeks to extend the current pilot period of the Program until November 4, 2016.<sup>14</sup>

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>15</sup> In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that extending the pilot period for the Program is consistent with these principles because the Program is reasonably designed to enhance quote competition, improve liquidity in securities listed on the Exchange, support the quality of price discovery, promote market transparency, and increase competition for listings and trade executions, while reducing spreads and transaction costs in such securities. Maintaining and increasing liquidity in Exchange-listed securities will help raise investors’ confidence in

<sup>14</sup> The Exchange notes that it is proposing to extend the Program for only one week in order to provide the Exchange with time to update its Web site and submit to the Commission monthly data reports related to the Program as described in the CLP Approval Order going back to July 2015, upon the completion of which the Exchange plans to file a longer-term extension to the Program. Such reports are available at the following link: [http://www.bats.com/us/equities/etfmarketplace/trade\\_on\\_bats/clp/reports/](http://www.bats.com/us/equities/etfmarketplace/trade_on_bats/clp/reports/).

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

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

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

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

the fairness of the market and their transactions.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change extends an established pilot program, thus allowing the Program to enhance competition in both the listings market and in competition for market makers. The Program will continue to promote competition in the listings market by providing issuers with a vehicle for paying the Exchange additional fees in exchange for incentivizing tighter spreads and deeper liquidity in listed securities and allow the Exchange to continue to compete with similar programs at Nasdaq Stock Market LLC<sup>17</sup> and NYSE Arca Equities, Inc.<sup>18</sup>

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

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

The Exchange has 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

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

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

pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>20</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative before 30 days from the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>21</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange asserts that waiver of the operative delay will allow the Exchange to extend the Program prior to its expiration on October 28, 2016, which will ensure that the Program continues to operate uninterrupted while the Exchange and the Commission continue to analyze data regarding the Program. The Commission notes that this filing's proposal to extend the Program for only one week is based on the Exchange's representation that the one-week period will allow the Exchange time to update its Web site and submit to the Commission monthly data reports related to the Program as described in the CLP Approval Order going back to July 2015, and that, upon the completion of the update and submission, the Exchange will file a longer-term extension to the Program.<sup>22</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.<sup>23</sup>

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.

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

<sup>20</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Commission has waived the pre-filing requirement.

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

<sup>22</sup> See *supra* note 14.

<sup>23</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BatsBZX-2016-71 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BatsBZX-2016-71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BatsBZX-2016-71 and should be submitted on or before November 29, 2016.

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

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79221; File No. SR-Phlx-2016-107]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 1079 Concerning the Process of Initiating a FLEX Transaction and Determining the Best Bid or Offer

November 2, 2016.

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> notice is hereby given that on October 19, 2016, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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 proposes to amend Exchange Rule 1079, FLEX Index, Equity, and Currency Options, at Section (b), Procedure for Quoting and Trading FLEX Options.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqphlx.cchwallstreet.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 aspects 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 section (b), Procedure for Quoting and Trading FLEX Options, of Rule 1079. Specifically, the Exchange proposes to amend subsection (1), Requesting Quotations, by largely reversing the changes it made to that subsection in a 2013 proposed rule change (the “2013 Amendments”).<sup>3</sup> The changes proposed herein deal only with the process of initiating a FLEX transaction and determining the best bid or offer (“BBO”). No other aspects of Rule 1079, as changed by the 2013 Amendments, are proposed to be amended.

FLEX option transactions on the Exchange are governed by Rule 1079. Under Rule 1079(b) a Requesting Member may obtain quotes and execute trades in certain non-listed FLEX options at the specialist post of the non-FLEX option on the Exchange. The Requesting Member is a Phlx member, qualified to trade FLEX options pursuant to paragraph (c) of Rule 1079, who initiates a FLEX Request For Quotes (“RFQ”) pursuant to Rule 1079(b).<sup>4</sup> FLEX options are not continuously quoted and series are not pre-established. Moreover, the Exchange’s electronic quoting and trading system is not available for FLEX options. The variable terms of FLEX options are established through the process described in Rule 1079.

Pursuant to the 2013 Amendments, the Exchange revised a number of its FLEX rules, which it stated were intended to be similar to those of NYSE MKT LLC (“Amex”). Rule 1079(b)(1) was revised to require the Requesting Member to submit to the FLEX Specialist an RFQ utilizing for that purpose the forms, formats and procedures established by the Exchange. The 2013 Amendments also amended Rule 1079(b)(1) to provide that, on receipt of an RFQ in proper form, the assigned FLEX Specialist shall cause the

terms and specifications of the RFQ to be immediately announced at the post. Thus, the 2013 Amendments added new requirements mandating the participation of an assigned FLEX Specialist at the inception of every FLEX transaction.

Prior to the 2013 Amendments, Rule 1079(b)(1) permitted a Requesting Member to initiate an RFQ *without* the participation of a FLEX Specialist, by first announcing all of the following contract terms to the trading crowd of the non-FLEX option and then submitting an RFQ ticket to that specialist post: (1) Underlying index, security or foreign currency; (2) type, size, and crossing intention; (3) in the case of FLEX index options and FLEX equity options, exercise style; (4) expiration date; (5) exercise price; and (6) respecting index options, the settlement value. Thereafter, on receipt of an RFQ in proper form, the assigned Specialist or Requesting Member was required to cause the terms of the RFQ to be disseminated as an administrative text message through the Options Price Reporting Authority (“OPRA”). Operationally, the Requesting Member provided this information to Exchange staff who entered it into Exchange systems.<sup>5</sup>

Because most Exchange specialists no longer have a presence on the Exchange’s trading floor, and are therefore unable to trade FLEX options, and because Exchange specialists (remote or otherwise) may have no interest in being an assigned FLEX Specialist in any event, the Exchange proposes to revert to Rule 1079(b)(1) largely as it read prior to the 2013 Amendments. That language did not require the participation of a FLEX Specialist to initiate a FLEX trade. As revised, the rule will once again permit FLEX transactions to be initiated without the participation of a specialist so long as all other requirements of Rule

<sup>5</sup> See Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 4, and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Traded Equity and Index Options) (SR-Phlx-96-38) (the “1998 Approval Order”) at footnote 36. The 2013 Amendments also revised Rule 1079(b)(1) by eliminating the original requirement that the assigned Specialist or the Requesting Member cause the terms of the RFQ to be disseminated as an OPRA text message, and by substituting for that original requirement a statement, in passive voice that does not specify on whom the obligation is imposed, that the terms and specifications of the RFQ “shall be disseminated as an administrative text message through OPRA.” As a matter of practice today, the Requesting Member still provides this information to Exchange staff who enter it into Exchange systems.

<sup>3</sup> See Securities Exchange Act Release No. 69586 (May 15, 2013), 78 FR 29797 (May 21, 2013) (SR-Phlx-2013-50) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FLEX Options).

<sup>4</sup> All transactions must be in compliance with Section 11(a) of the Securities Exchange Act of 1934 and the rules promulgated thereunder, which may include yielding priority to customer orders.

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

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

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