IEX Group, Inc.
4 World Trade Center, 44th Floor
New York, New York 10007
1 646 343 2000 tel
1 888 481 9706 tel
www.iextrading.com

June 23, 2017

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release No. 34-80683; File No. SR-BatsBZX-2017-34

Dear Mr. Fields:

Investors Exchange LLC ("IEX") is pleased to comment on the proposal ("Proposal") by Bats BZX Exchange, Inc. ("Bats") to introduce a new closing match process for securities that are not listed on Bats, labeled Bats Market Close ("BMC").[1] IEX is considering filing a similar proposal in the near future and believes that such alternatives will promote competition and provide an alternative for investors and other participants who want to receive an execution at the closing price. IEX also intends to begin to operate as a listing market for corporate securities, subject to regulatory approval, later this year.

The Proposal would create a new closing match process for stocks listed on markets other than Bats by allowing participants to send buy and sell market on close ("MOC") orders to Bats, or cancel and replace such orders, until 3:35 p.m. Eastern Time each trading day. Bats will match all such orders at that time, and any remaining balance of unmatched shares would be cancelled back to the senders. Bats would disseminate the size of all matched orders per security by the BATS Auction Feed. Bats will then execute matched orders at the official closing price of each primary listing market upon its publication of that price.

We believe the match process described in the Proposal will promote healthy competition for orders that would otherwise have no choice but to go to the primary listing market. Not surprisingly, NYSE Group ("NYSE") and Nasdaq, Inc. ("Nasdaq") (collectively, the "Incumbents") submitted comment letters strongly objecting to the Proposal.[2] We believe these objections (which are quite similar in both letters) are meritless and represent nothing more than an attempt to maintain monopoly control over closing market orders for listed stocks and the revenue those orders provide.

First, the Incumbents claim that the Proposal will create harmful fragmentation and impair the price discovery process. As Bats noted in its filing, the Proposal will not affect price discovery

[1] *See* Securities Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017).

[2] Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, Inc. to Brent J. Fields, Secretary, SEC, dated June 12, 2017; Letter from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE Group to Brent J. Fields, Secretary, SEC, dated June 13, 2017.

because it excludes limit orders from participation in the cross, and Bats has proposed to disseminate immediately to the market the size of matched shares in each security, which will allow this information to be considered by participants who participate in the primary market's closing process.

Further, we note that Nasdaq and NYSE Arca now provide for competing closing auctions, with the use of price-setting limit orders and not just market orders, for stocks listed on other markets, and those competing auctions have never been prohibited or even questioned on the ground that they would impede price discovery. NYSE suggests vaguely that its Designated Market Makers would have less information than they do now in setting a closing price, but they (and other participants) will know in advance what was paired on BZX, and unfilled orders can participate in the NYSE closing auction as they do now.

The Incumbents also note that, that under their rules, if only MOC orders were submitted for an auction on Nasdaq or NYSE Arca, the midpoint of the current national best bid and offer ("NBBO") would be used as the closing price, whereas if no orders are submitted, the last sale price will be used. They object that if all MOC orders that would otherwise go to their auction migrate to the BMC and there are no other orders submitted in the auction, the last sale price could result in a stale or less reliable reference price than the NBBO midpoint. If this is a concern, it is easily addressed. Both exchanges are free to amend their rules if they deem it necessary to determine the fairest closing price for each type of auction scenario (for example, in this case by using the NBBO as the closing price if there are MOC orders executed on the primary or any other market). Neither exchange is bound to, or in fact should be allowed to, ignore market developments and trading activity on other markets in setting the closing price in this type of circumstance.

Further, we believe that NYSE's stated concern that the Proposal would add to market fragmentation and hurt liquidity is incomprehensible considering the Incumbents' current method of operation. NYSE and Nasdaq each now owns four exchange licenses, and these are distinguished from each other based primarily on differences in rebates and access fees paid under the predominant "maker-taker" pricing system, which is a primary contributor to market complexity and fragmentation. Bats' Proposal instead is a pro-competitive measure that will provide another option for participants seeking a market price to find each other. In effect, NYSE and Nasdaq view fragmentation as anything that impacts their bottom line, while their own competing auctions, which allow the use of price-setting limit orders, and their forced segmentation of order flow among multiple exchanges, represent healthy competition.

Second, we do not find convincing the argument that the Proposal will increase the potential for manipulation of the closing price. Many participants with positions in NMS stocks have an interest in the closing price for various reasons, and exchanges are required to have mechanisms in place to prevent and identify manipulation. Participation in the BMC, followed by activity intended to affect the closing price on the primary market, would be as or more conspicuous than other trading patterns exchanges already surveil, and the consolidated audit trail will provide a new tool to do so.

Third, the Incumbents both claim that the Proposal would allow Bats to "freeride" on investments they have made as listing markets and in their closing processes, and NYSE astoundingly claims that it would *burden* competition by depriving NYSE of the ability to reap what it views as the full benefit it is entitled to as a listing market. The real enemies of competition in this case are quite clear. Exchanges, including NYSE, routinely try to compete by copying the designs or intellectual property of their competitors and adjusting their price schedules to attract order flow. If the Incumbents are successful in convincing the Commission to reject the Proposal, they will maintain a monopoly on the orders of participants who want to receive the closing price in a stock. With that leverage, they will be able to continue to increase the fees for those orders with little regulatory and no market competition constraint, in the same way that they continue to force higher fees for market data.

We think the right answer is clear and the Commission should promptly approve the Proposal.

Sincerely,

John Ramsay
Chief Market Policy Officer

cc: Hon. Jay Clayton, Chairman
Hon. Michael Piwowar, Commissioner
Hon. Kara Stein, Commissioner
Heither Seidel, Acting Director, Trading and Markets
David Shillman, Associate Director, Trading and Markets