Bats
a CBOE company

October 11, 2017

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

RE: Securities Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR-BatsBZX-2017-34)

Dear Mr. Fields:

Bats BZX Exchange, Inc. ("Bats" or the "Exchange") appreciates the opportunity to submit this second letter on the above-referenced proposed rule change in which the Exchange proposes to adopt Bats Market Close, a closing match process for non-BZX Listed Securities[1] under new Exchange Rule 11.28 (the "Proposal"). As described more fully in the Proposal, all buy and sell Market-On-Close ("MOC") orders[2] designated for participation in Bats Market Close would be matched at the official closing price for such security published by the primary listing market. The Exchange submitted its initial letter responding to comments on August 2, 2017 ("First Bats Letter").[3] On August 18, 2017, the Securities and Exchange Commission (the "SEC" or "Commission") issued an order instituting proceedings to determine whether to approve or disapprove the Proposal (the "Order").[4] In the Order, the Commission solicited comments on certain topics and issues concerning the Proposal. Bats initially addressed many of these issues in the First Bats Letter and incorporates those points herein. Set forth below are the Exchange's additional responses to the questions the Commission solicited comments on in the Order.

1. Would the Proposal Affect the Price Discovery in the Closing Auction Process on Each Primary Listing Exchange?

As stated in the First Bats Letter, the Proposal would not impede the ability of other primary listing markets to discover their own price for a security. By matching only MOC orders, and not Limit-On-Close ("LOC") orders, and executing those matched MOC orders that

1 A BZX Listed Security is a security listed on the Exchange pursuant to Chapter 14 of the Exchange's Rules and includes both corporate listed securities and Exchange Traded Products ("ETPs").

2 The term "Market-On-Close" or "MOC" means a BZX market order that is designated for execution only in the Closing Auction. *See* Exchange Rule 11.23(a)(15).

3 *See* letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc. to Mr. Brent J. Fields, Secretary, Commission, dated August 2, 2017.

4 *See* Securities Exchange Act Release No. 81437 (August 18, 2017), 82 FR 40202 (August 24, 2017).

naturally pair off with and effectively cancel each other out, the Proposal avoids any impact on price discovery. Several commenters who support the Proposal also agreed with the Exchange that Bats Market Close would not harm price discovery.[5] Also, as we described in the First Bats Letter, other foreign regulators agree that such proposal would not harm price discovery. For instance, the Ontario Securities Commission ("OSC') approved a proposal by Chi-X Canada ATS (currently owned by Nasdaq) to match MOC orders at the closing price published by the Toronto Stock Exchange ("TSX").[6] In its approval order, the OSC stated that Chi-X Canada's proposal would not "threaten the integrity of the price formation process" and would put pressure on the TSX to competitively price executions during their closing auction process.

Matched MOC orders are recipients of price formation, but do not contribute to the price formation process. While the Proposal may reduce the number of market orders pooled together at the primary listing market, the Exchange removes any perceived adverse impact on the primary listing markets' close by publishing the number of matched market order shares by security in advance of the primary market's cutoff time. The total matched shares would be disseminated by the Exchange at 3:35 p.m. Eastern Time via the Bats Auction Feed, which is provided free of charge. This information could be incorporated in the primary market's closing process. The Exchange is also willing to disseminate such information via the securities information processors, if permissible.

As discussed under Section 4 below, a significant amount of volume at the close occurs today off-exchange and does not appear to impact the price discovery process performed by the primary market closing auctions. Further, neither the NYSE nor Nasdaq expressed concern about off-exchange venues matching MOC orders at the official closing price. It is not until a competing exchange sought to add price competition in this area that the NYSE and Nasdaq now raise price discovery as an issue.

Both NYSE Arca and Nasdaq operate competing, price-forming auctions, positioned to siphon order flow, including price-setting limit orders, from the primary listing market's closing auction. In addition to fragmenting the market, these non-primary listing market auctions can produce bad auction prices on the non-primary market itself. The Exchange struggles to understand the basis on which the NYSE and Nasdaq continue to run their competing auctions daily while they seek to prevent a price competitive process that does not siphon price forming orders from the primary listing market. If the Commission finds that the Proposal is inconsistent with the Securities Exchange Act of 1934 (the "Act"), it must also revisit its approval of NYSE Arca's and Nasdaq's competing auctions, which have the potential to inflict more harm on the price discovery process than commenters argue the Proposal may do if approved. While we read

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5 *See* Angel Letter, IEX Letter, SIFMA Letter, Virtu Letter, and Clearpool Letter. Virtu is a registered Designated Market Maker on the NYSE.

6 *See* OSC's Notice of Commission approval of Proposed Changes, dated April 21, 2015, *available at* http://www.osc.gov.on.ca/en/Marketplaces_ats_20150430_nca-pro-changes.htm. *See also* OCS's Notice of Proposed Rule Change and Request for Comment *available at* http://www.osc.gov.on.ca/en/Marketplaces_ats_20150219_rfc-pro-changes.htm.

with great interest the numerous form letters sent in from distinguished issuers, we realized that during Nasdaq's and NYSE's solicitations for these issuer letters they failed to mention that both exchanges already run competing, liquidity-fragmenting closing cross auction themselves. It is obvious to us that the solicitation for these issuer letters was not conducted with full transparency of the current market dynamic. For example, did Nasdaq mention to its issuers that it intended to offer the same product in Canada? Did the NYSE or its DMMs tell its issuers that NYSE Arca performs a closing cross in Nasdaq stocks every day? Obviously, both exchanges and their representatives failed to mention these inconvenient facts while soliciting opinions from their issuers.

2. <u>To What Extent, if at all, would the Availability of Bats Market Close Impact Market Participants' use of Limit-on-Close Orders in the Closing Auction Processes on the Primary Listing Exchanges, Including with Respect to Size and Price?</u>

The Exchange does not believe that market participants' use of LOC orders would be altered by the availability of Bats Market Close. In particular, the Exchange does not anticipate that market participants that currently use LOC orders would shift toward MOC orders solely to participate in Bats Market Close in return for the lower fee. LOC orders provide price protection that MOC orders do not. The advantage of using MOC orders solely for the lower fee would not outweigh the risk of receiving an execution at an unfavorable price. Moreover, opportunities exist today by which market participants may enjoy favorable economics for MOC orders matched at the official closing price through off exchange venues. Neither the NYSE, Nasdaq nor the SEC raised a concern that these off exchange facilities have affected the use of LOC orders on the primary listing markets. As mentioned in the First Bats Letter, several off-exchange venues currently offer executions at the official closing price. These off-exchange venues provide market participants a forum to which they may send MOC orders instead of LOC orders to the primary listing market.

3. <u>What Analyses of Available Data Could Provide Information About Relationships Between Information Disseminated During Closing Auctions, Trading Strategies in Closing Auctions, and Closing Prices?</u>

The Exchange proposes to disseminate the total shares matched via Bats Market Close at the Exchange at 3:35 p.m. Eastern Time via the Bats Auction Feed, which is provided free of charge. The Exchange would disseminate this data to provide transparency and timely information to the marketplace regarding the level of trading activity and depth of participation occurring within Bats Market Close. The information is quite simple and would be disseminated at one point in time set early enough that it could easily be incorporated into the closing process as market participants and the primary listing markets see fit.

4. <u>What Amount of Trading Volume at the Close Occurs on Venues Other than the Primary Listing Exchanges (such as Competing Closing Auctions and/or Broker-Dealer Internal Matching Processes for MOC orders) and How Does Such Closing Volume Compare with that of the Primary Listing Exchanges?</u>

A significant amount of trading volume at the close occurs on venues other than the primary listing exchanges. These venues include competing auctions run by the primary listing markets themselves as well as off-exchange venues that match market orders at the official closing price.

Off-exchange venues siphon significant order flow at the close from the primary listing markets by offering executions at the official closing price following the listing market closing auction. For example, the Exchange compared off-exchange volume executed at the official closing price to volume executed at the listing market closing auctions from January 2, 2017 through September 28, 2017.[7] The Exchange found that off-exchange volume executed at the official closing price represented approximately 30% of comparable Nasdaq closing auction volume for Nasdaq-listed securities and approximately 23% of comparable NYSE closing auction volume for NYSE-listed securities. This resulted in approximately $269,821,252,664.00 and $426,069,468,362.00 in notional volume occurring at off-exchange venues in Nasdaq-listed and NYSE-listed securities, respectively.[8] The below table compares the total off-exchange closing volume against the primary listing markets closing volume from January 2, 2017 through September 28, 2017.

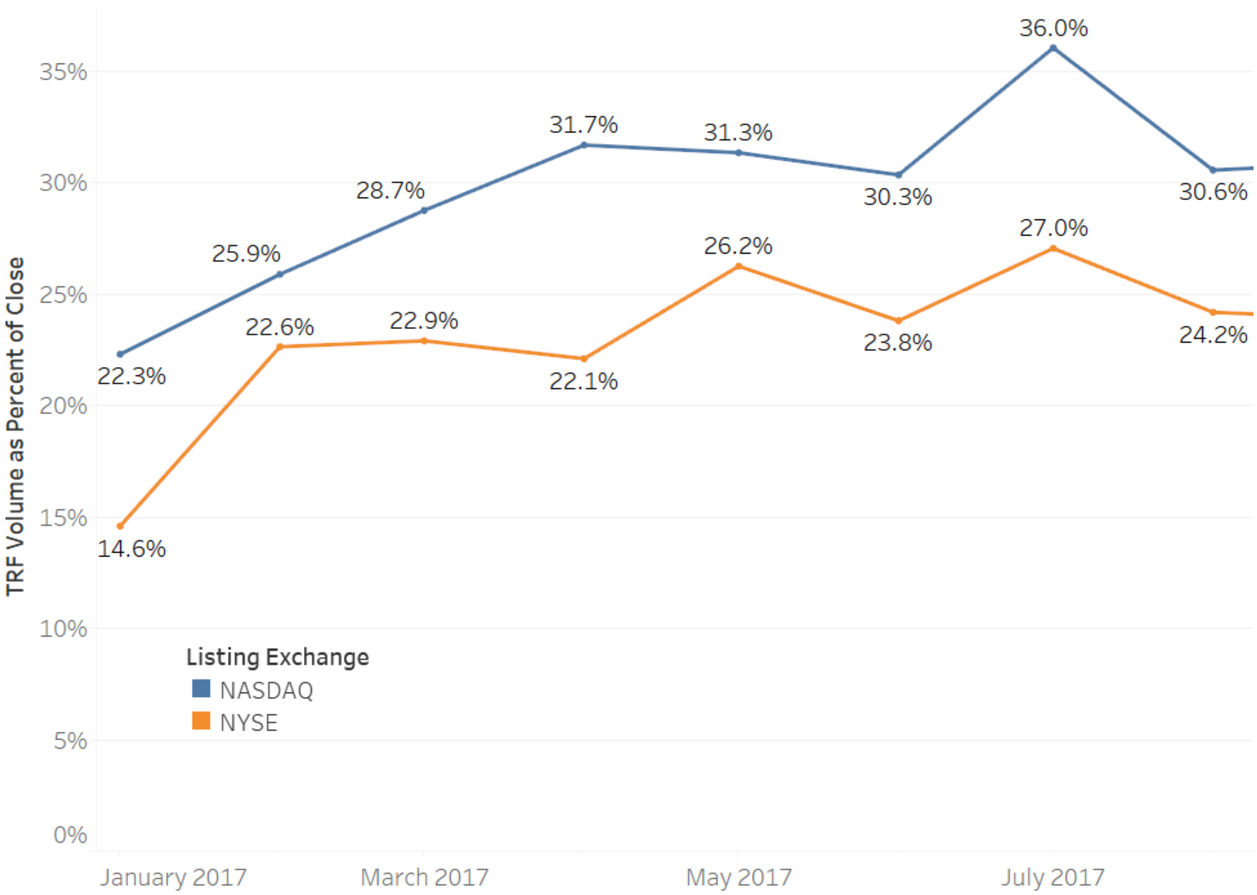
	Listing Exchange	
	NASDAQ	NYSE
Total TRF Volume	4,940,603,056	8,773,425,036
Total Listing Market Closing Auction Volume	16,579,531,430	38,056,988,765
ADV TRF Volume	27,447,795	48,741,250
ADV Listing Market Closing Auction Volume	92,108,508	211,427,715
TRF as Percent of Listing Market Closing Auction Volume	29.80%	23.05%

Source: Bats internal data.

[7] The Exchange collected the data for transactions executed at the official closing price for NYSE and Nasdaq listed securities reported to the TRF from January 2, 2017 to September 28, 2017. The TRF transactions were reported between 4:00 PM and 4:20PM.

[8] Source. Bats internal data.

It is worth noting that there has been an increase in closing volume moving to off-exchange venues in 2017. The below chart shows the total shares matched off-exchange at the official closing price has increased throughout 2017, jumping from 22.3% in January to 30.9% in September in Nasdaq-listed securities and from 14.6% to 23.9% in NYSE-listed securities for the same period.



Source: Bats internal data.

Furthermore, the Exchange studied the top twenty most actively traded securities during the same time period and found that a significant portion of the total closing volume executed off-exchange following dissemination of the official closing price: Ford Motor Company (F) 39.63%; Frontier Communications Corporation (FTR) 39.69%; Comcast Corp. (CMCSA) 34.19%; and AT&T Inc. (T) 36.09%.[9] The Proposal would, therefore, not introduce a new type of fragmentation at the close. In fact, the Proposal could increase transparency by incentivizing market participants to re-direct their MOC orders from off-exchange venues to a public exchange via Bats Market Close. Further, unlike the operation of the off-exchange matching process, the operation of Bats Market Close would be subject to the protections and requirements of the Act,

[9] *See* Appendix A attached hereto.

would be clearly described in the Exchange's rules, and would be subject to the rule change requirements of Section 19(b) of the Act before the Exchange could change the operation of Bats Market Close.

The NYSE and Nasdaq contribute to fragmentation at the close today through their own competing closing auctions conducted daily on a broad base of non-primary listings. This existing fragmentation could increase today should NYSE Arca's or Nasdaq's competing auctions see an increase in order flow. Arguing that they currently attract low trading volumes is irrelevant to whether they do or may impact fragmentation.

As asserted in the First Bats Letter, the Commission's approval of a new product should not hinge upon speculation about whether the product would be successful and about whether such predicted success or failure would negatively impact the market by contributing to fragmentation. That was not the standard when NYSE Arca's and Nasdaq's competing auctions were approved by the Commission, and it should not be the standard here.[10] The Proposal must simply be consistent with the Act, as this one clearly is. More importantly, the SEC's prior precedent in this area further supports that the Proposal is consistent with the Act.[11]

The NYSE's argument that it must run its competing auction on a daily basis to ensure it would operate properly in the case of a market impairment is a rationalization. The market impairment process has never been used to date, whereas the auctions are an every-day event. If market impairment were a valid reason for utilizing competing auctions, the NYSE and Nasdaq could address that concern and avoid their professed concerns about market fragmentation by conducting their respective competing auctions only in the event of an impairment or to conduct periodic testing, and cease doing so on a daily basis. The potential for a market impairment event neither justifies nor necessitates the daily operation of closing auctions.

5. <u>Would the Proposal Have a Positive, Negative, or Neutral Impact on Competition?</u>

The Exchange believes the Proposal would have a positive impact on competition by offering a price-competitive alternative to the primary listing markets' closing auction process. The proposed rule change would promote competition among national securities exchanges in the execution of MOC orders at the official closing price without disrupting the price discovery process performed by the primary listing markets' closing processes. The primary listing

10 *See* Securities Exchange Act Release No. 55721 (May 7, 2007), 72 FR 27344 (May 15, 2007) (SR-Nasdaq-2007-047) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish an Opening and Closing Cross for Securities Listed on the NYSE, Amex, and Regional Exchanges). *See also* Securities Exchange Act Release No. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR-NYSE-2016-18) and (SR-NYSEMKT-2016-31).

11 The Commission also did not consider the potential success of the trading floor proposed by the BOX Options Exchange, Inc. ("BOX") and its potential impact on fragmentation when approving that proposal. *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144, *at* 37154 (August 8, 2017) (SR-BOX-2016-48).

markets benefit from tremendous incumbent advantages in today's markets. These advantages allow them to retain market share and effectively compete in other areas, such as corporate listing and other exchange related products. The primary listing market should welcome our right to compete. Offering executions through Bats Market Close for a lower fee than charged by the primary listing market will not alone attract order flow. In addition to cost, exchanges also compete based on execution quality, depth of liquidity, novelty and usefulness of innovative products, comprehensive platforms, as well as resilient technology. Bats Market Close would not attract order flow just because it is cheap. To compete, the Exchange must build Bats Market Close into a viable alternative pool of liquidity to which market participants choose to send their order.

It also has been argued by competing exchanges that the Proposal is not consistent with the Act because it only seeks to "free-ride" off the official closing price produced by the primary listing markets' closing auction processes. To repeat what was stated in the Proposal and the First Bats Letter, it is a well-established practice for an exchange to price buy and sell orders based upon reference data.[12] Both the NYSE and Nasdaq have the ability to use reference prices today to establish their official closing price.[13] Importantly, there is precedent for an exchange to execute orders solely at reference prices while not also displaying priced orders for that security. For example, the NYSE offers an after hours crossing session which permits the entry and execution after regular trading hours of orders at the NYSE's official closing price.[14] In addition, the ISE Stock Exchange initially executed orders only at the midpoint of the NBBO, and did not display any orders, therefore never contributing to the determination of the NBBO.[15]

12 *See* Exchange Rule 11.9(c)(9) (Mid-Point Peg Order); *see also* Nasdaq Rule 4702(b)(5)(A) (Midpoint Peg Post-Only order); NYSE Arca Equities Rule 7.31(h)(3) (Mid-Point Passive Liquidity Orders); Bats EDGX Exchange, Inc. ("EDGX") Rule 11.8(d) (MidPoint Peg Orders). What these order types have in common is that their execution prices are derived from the top of book prices of all "Protected Quotations", as such term is defined in Rule 600(b)(58) of Regulation NMS under the Exchange Act. In addition, several pegged order types on various exchanges, including EDGX, NYSE Arca, and Nasdaq, are set in some relationship to the NBBO, regardless of which exchange established or currently has liquidity at the NBB or NBO. *See* Exchange Rule 11.9(c)(8); EDGX Rule 11.6(j) (Pegged instruction); Bats EDGA Exchange, Inc. ("EDGA") Rule 11.6(j) (Pegged instruction); Nasdaq Rule 4703(d) (Pegging); *and* NYSE Arca Rule 7.31(h)(1) and (2) (Primary Pegged Orders and Market Pegged Orders).

13 The Exchange also notes that in the event a primary listing market cannot perform a closing auction due to a systems issue, in some circumstances they may determine their official closing price pursuant to contingency procedures that do not utilize a closing auction process. In such a case, the official closing price may be either the: (i) volume-weighted average price ("VWAP") of the consolidated last-sale-eligible prices of the last five minutes of trading during regular trading hours as calculated by the applicable securities information processor; or (ii) the last consolidated last-sale-eligible trade for the security during regular trading hours on that trading day. *See* Exchange Rule 11.23(i); *see also* Securities Exchange Act Release No. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR-NYSE-2016-18) and (SR-NYSEMKT-2016-31) ("OCP Approval Order"). *See also* Nasdaq Rule 4754(b)(8); *and* NYSE Arca Rule 1.1(kk)(2).

14 *See* NYSE Rule 902. The NYSE operates a post close crossing session that permits the entry of orders after the closing auction has occurred while guaranteeing the official closing price.

15 *See* Securities Exchange Act Release No. 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006) (SR-ISE-2006-45). *See also* ISE Announces MidPoint Match Launch On September 8, *available at*

The Commission approved these proposals and others that rely on market reference prices. Therefore, the Exchange continues to believe that executing trades at the official closing price disseminated by the primary listing market is consistent with existing behavior and does not present any novel issues not already considered and approved by the Commission when those orders types and practices were established.

No rule or regulation provides the primary listing market with control over how other market participants use the official closing pricing in their matching engines or with regard to the pricing of their own products, such as mutual funds, ETFs, and indices. The official closing price is disseminated via the applicable securities information processor pursuant to national market system plans approved by the Commission under Rule 608 of Regulation NMS. The concept of an official closing price was approved by the operating committees of each securities information processor, of which the Exchange is a participant. No rule or regulation prohibits the Exchange from using the official closing price in executing transactions.

Furthermore, exchanges innovate in order to compete by creating new order types, modifiers, or other system enhancements. To do so, exchanges invest heavily in developing and improving these products and processes. Each of these changes is filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder. No rule or regulation would prohibit the Exchange from filing a proposal with the Commission to utilize certain aspects of the primary listing market's closing auction, such as utilizing the official closing price as set forth in the Proposal. Each exchange improving and mimicking functionality enhances the competitive dynamic amongst exchanges.

6. What Effect Would the Proposal Have on Market Complexity and/or Operational Risk, if Any?

The Proposal will not add complexity to the market or increase operational risk. In fact, the Proposal is quite simple. It is a straightforward crossing process that matches one order type only, MOC orders, at one time (3:35 p.m.) well in advance of the cutoff times of the primary listing markets. Today, market participants have numerous choices of where to send their orders at the close. These range from the primary listing markets' auction, the competing auctions those same markets conduct, as well as off-exchange venues that provide executions at the official closing price. The Proposal simply adds an additional pool of liquidity where orders may be routed at the close.

Any information that the primary market or other market participants may need would have plenty of time to reach them. In addition, the cut-off time would provide market participants adequate time to route any order not matched via the Proposal to the primary listing market for participation in its closing auction. As noted in the First Bats Letter, participation in Bats Market Close is voluntary. No rule or regulation would require market participants to send

https://www.globalcustodian.com/Market-Infrastructure/ISE-Announces-MidPoint-Match-Launch-On-September-8/.

orders to Bats Market Close. Market participants would have a choice of whether to send their orders to Bats Market Close and would have the opportunity to weigh the value of the execution v. the risk they may perceive. Therefore, the Proposal would not add any additional market complexity. Nor would it affect operational risk, because market participants are not required to utilize it.

7. Would the Proposal Affect the Potential for Manipulation and, if so, what Types of Manipulative Activity Might Result from, or be Decreased by, the Proposal?

The Proposal would not increase the potential for manipulation nor would it lead to other types of manipulative activity. As we stated in the First Bats Letter, we strongly believe the notion that the Proposal would provide increased chances for manipulation is a scare tactic used by those fearing viable competition to sway regulators into disapproving the Proposal. It also ignores the supervisory responsibilities and capabilities of exchanges and the expansive cross market surveillance conducted by FINRA today. Following approval of the Proposal, the Exchange, FINRA and others would continue to surveil for potential manipulative activity and seek to punish those that engage in such behavior.

The NYSE and Nasdaq suggested that a risk arises from the asymmetry of information disseminated pursuant to the Proposal. This notion ignores what they both disseminate (or fail to disseminate) as part of their closing auction processes. They suggest that the difference in information disseminated via the Proposal and the time at which it is disseminated could lead to potential gaming and opportunities to manipulate the official closing price. This is not true. The very nature of trading creates short term asymmetries of information to those who are parties to a trade. The Proposal and the current primary market's closing auctions are no different. If that standard of review was used on the NYSE's closing auction process, then the SEC would have to ban the use of the NYSE D-Quote for its likely opportunity for manipulation of the closing price as we have shown in our data in the First Bats Letter.

Concerns were also raised about information leakage because the Exchange proposes to disseminate its total matched volume at 3:35 p.m. The concern is that market participants may decipher the side on which the imbalance exists by seeing what portion of their order has not been matched. This is also fearmongering by the NYSE and Nasdaq. Both the NYSE and Nasdaq disseminate imbalance information leading up to their auctions. The NYSE also provides d-Quotes, which present their own information advantages discussed in the First Bats Letter. The Exchange believes that the information disseminated via the Proposal would not provide market participants any indication of whether the return of a particular side of an order is meaningful or just happenstance. Therefore, increased or other types of manipulative activity will not be created by the Proposal. Regulators, such as the Exchange and FINRA, may also augment or develop new surveillance procedures to detect and prevent manipulation at the close generally and through the use of Bats Market Close.

8. What are the Potential Impacts of the Proposal for Listed Issuers?

The Exchange believes the Proposal would have no impact on listed issuers or their securities. The Proposal is designed to introduce a meaningful alternative to a single area of the market – the closing auction. It would not adversely impact the trading environment for issuers and their securities. In fact, the Exchange specifically designed the Proposal so that it would not impact the very important price discovery function performed by the primary listing markets' closing auction. Unlike competing auctions offered by Nasdaq and NYSE, the Proposal would not create a price that deviates, potentially significantly, from the official closing price. In the First Bats Letter, we set forth research that found that competing NYSE Arca and Nasdaq closing auctions usually print a different closing price than that of the primary listing market.[16] As stated above, the Proposal sets forth a simple process where market participants may voluntarily send MOC orders for execution at the official closing price. It would not impact the price discovery process performed by the primary listing markets' closing auctions. The Exchange has designed the Proposal to avoid harming an issuer's securities, unlike the competing auctions conducted by the primary listing markets. Therefore, the Proposal would not impact listed issuers or the market for their securities. More importantly, the Exchange's data regarding off-exchange closing liquidity suggests that MOC liquidity is currently permitted to move and execute outside the primary listing market's closing auction without impact to the official closing prices for issuers.

Conclusion

In its Order, the Commission stressed the importance of closing auctions of the primary listing markets, citing its statements in the Regulation SCI adopting release that systems that support closing on primary markets are "critical SCI systems" and "reliable . . . closings on the primary listing markets are key to the establishment of fair and orderly markets".[17] The Exchange could not agree more. The Proposal is simply designed to introduce a meaningful alternative to a single area of the market – the closing auction. As explained below, the Proposal would not impact the important price discovery process performed by closing auctions on the primary listing markets. Nor would it adversely impact the trading environment for issuers and their securities.

The Proposal further is consistent with the Commission's assertion that closing auctions are critical SCI systems. As noted in the First Bats Letter, the Proposal would provide a much

[16] 86% of the competing closing auctions conducted by Nasdaq for NYSE-listed securities in June 2017 resulted in closing prices different from the official closing price published by the NYSE. Similarly, 84% of competing closing auctions conducted by NYSE Arca for Nasdaq-listed securities in the same month resulted in closing prices different from the official closing price published by Nasdaq. *See supra* note 3, Table 2 in Appendix A. Both NYSE Arca and Nasdaq's competing closing auctions are price forming. Table 2 in Appendix A shows that the closing prices that these competing auctions effect are usually different from the official closing price determined by the primary listing markets' closing auction.

[17] *See supra* note 4 at 40210.

needed, seamless, and easy way for the industry to address the single point of failure risk that exists for closing auctions today, especially when a primary listing market is experiencing systems issues and lacks full operational capability. As Bats has previously asserted, in the event of a system's disruption at the primary listing market, Bats Market Close could provide an alternative pool of liquidity to which market participants could send MOC orders for execution at the official closing price.[18] Therefore, it promotes just and equitable principles of trade and competition among national securities exchanges. Bats Market Close would also remove impediments to and perfect the mechanism of a free and open market and a national market system by providing a mechanism for market participants to execute their orders at the official closing price should a system disruption on the primary listing market prevent them from entering orders.

Furthermore, Bats Market Close would operate on the Exchange's reliable SCI systems. As evidenced above, significant MOC liquidity is conducted today by off-exchange venues. These venues are not SCI systems and, therefore, not subject not the subject to Regulation SCI's enhanced resiliency requirements. The Proposal could attract MOC orders from these off-exchange venues to the Exchange and its reliable SCI system, furthering the Commission's presumed desire for liquidity at the close to be conducted on SCI systems.

As we previously stated, the Exchange continues to remain willing to work with the Commission and others to amend the Proposal to address any remaining concerns. The Exchange also remains willing to disseminate more information with regard to Bats Market Close and to include such information not only on its Bats Auction Feed (which is provided free of charge), but also disseminate it via the applicable securities information processor, if permissible.

It is not the Exchange's intent to adversely affect equity market structure or to harm the market for issuers and their securities. We simply seek to add much needed price competition to one area of the market where many market participants agree competition is needed. The Exchange strongly believes that Bats Market Close is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, because it would execute MOC orders at the official closing price without disrupting the price discovery process of the primary listing markets' respective closing processes or adversely impacting the market for listed securities. We, therefore, strongly urge the Commission to approve the Proposal. If the Commission finds that our Proposal is inconsistent with the Act, it should also consider whether performing a competing auction in non-primary listed securities outside of a market impairment is also inconsistent with the Act as they harm price discovery for the reasons

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18 *See* the proposed operation of Bats Market Close where the primary listing market is impaired *at* Securities Exchange Act Release No. 80683 (May 16, 2017), 82 FR 23320, at 23321, note 17 (May 22, 2017).

19 15 U.S.C. 78f.

20 15 U.S.C. 78f(b)(5).

discussed above and in the First Bats Letter, including by siphoning LOC orders from the primary listing market closing auction.

Bats appreciates the opportunity to comment on the above proposed rule change and urges the Commission to approve it in a timely manner. Please feel free to contact Bryan Harkins at [redacted] or me at [redacted] if you have any questions related this matter.

Sincerely,

Joanne Moffic-Silver
Executive Vice President, General
Counsel, and Corporate Secretary

Appendix 1

Selected Top 20 symbols by average daily trading volume from January 2, 2017 through September 28, 2017.

Listing Exchange	Symbol	Total Close Volume	Total TRF Volume	ADV TRF Volume	ADV Close	TRF Volume as Percent of Close
NYSE	BAC	662,404,284	130,366,464	724,258	3,680,024	19.68%
	F	421,318,918	166,977,745	927,654	2,340,661	39.63%
	FCX	210,906,313	51,278,986	284,883	1,171,702	24.31%
	GE	571,041,406	178,725,313	992,918	3,172,452	31.30%
	GM	203,055,483	51,297,774	284,988	1,128,086	25.26%
	JPM	205,287,165	50,576,487	280,980	1,140,484	24.64%
	KO	237,268,640	64,995,780	361,088	1,318,159	27.39%
	PFE	397,382,569	106,251,767	590,288	2,207,681	26.74%
	T	326,139,026	117,693,605	653,853	1,811,883	36.09%
	VZ	223,645,549	47,194,771	262,193	1,242,475	21.10%
	WFC	259,730,780	62,612,408	347,847	1,442,949	24.11%
	XOM	246,510,770	60,750,101	337,501	1,369,504	24.64%
NASDAQ	AAPL	312,712,801	99,008,035	550,045	1,737,293	31.66%
	AMD	314,614,897	41,454,466	230,303	1,747,861	13.18%
	CMCSA	242,778,210	82,994,557	461,081	1,348,768	34.19%
	CSCO	333,183,247	109,716,043	609,534	1,851,018	32.93%
	FTR	335,255,784	133,049,182	739,162	1,862,532	39.69%
	INTC	357,674,752	150,091,663	833,843	1,987,082	41.96%
	MSFT	393,588,023	140,689,690	781,609	2,186,600	35.75%
	MU	222,297,153	73,046,802	405,816	1,234,984	32.86%

Source. Bats internal data.