

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79450; File No. SR-BatsBZX-2016-80)

December 1, 2016

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Proposed Rule Changes to BZX Rule 14.11, Other Securities, and BZX Rule 14.12, Failure to Meet Listing Standards

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 November 18, 2016, Bats BZX Exchange, Inc. (the “Exchange” or “BZX”) 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 amend the listing rules for exchange-traded products in Bats Rule 14.11 (“ETPs”) to add additional continued listing standards as well as a related amendment to Rule 14.12, entitled “Failure to Meet Listing Standards.” The Exchange is also proposing to make certain cleanup changes throughout Rule 14.11 in order to make the rule text more clear.

The text of the proposed rule change is available at the Exchange’s website 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the listing rules for ETPs in Bats Rule 14.11, entitled “Other Securities,” to add additional continued listing standards as well as a related amendment to Rule 14.12, entitled “Failure to Meet Listing Standards.” The Exchange is also proposing to make certain cleanup changes throughout Rule 14.11 in order to make the rule text more clear.

The proposed rule changes are being made at the request of and as part of discussions with the Commission. Based on concerns about certain of the ETP listing rules applying only on an initial basis, SEC staff has requested that the Exchange adopt certain additional continued listing standards for ETPs. As a result, the proposed amendment reflects guidance provided by SEC staff to clarify that most initial listing standards, as well as certain representations (“Continued Listing Representations”) included in Exchange rule filings pursuant to Section 19(b) of the Act³ to list an ETP on the Exchange (“Rule Filing”), are also considered continued listing standards. Continued Listing Representations will also be required to be maintained on a continuous basis and include any of the representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index and intraday indicative values (as applicable), and

³ 15 U.S.C. 78s(b).

the applicability of Exchange rules and surveillance procedures made in any filing to list a series of ETPs.

The proposed rule changes require that ETPs listed by the Exchange without a Rule Filing must maintain the initial index or reference asset criteria, among other requirements, on both an initial listing and continual basis. For example, in the case of a domestic equity index, these criteria generally include: (a) stocks with 90% of the weight of the index must have a minimum market value of at least \$75 million; (b) stocks with 70% of the weight of the index must have a minimum monthly trading volume of at least 250,000 shares; (c) the most heavily weighted component cannot exceed 30% of the weight of the index, and the five most heavily weighted stocks cannot exceed 65%; (d) there must be at least 13 stocks in the index; and (e) all securities in the index must be listed in the U.S. Such requirements are currently only applicable on an initial listing basis, but the proposal would require that such criteria be met on a continual basis as well. The Exchange is also proposing similar changes as it relates to the comparable criteria for international indexes, fixed-income indexes, indexes with a combination of components, and other underlying reference assets. Where an ETP fails to meet the proposed applicable continued listing requirements, the Exchange would, generally, initiate delisting proceedings pursuant to Rule 14.12.

If an ETP is listed on the Exchange pursuant to a Rule Filing, this proposed rule change would require that the issuer of the security comply on an ongoing basis with any Continued Listing Representations, which include any of the representations in the rule filing regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index and intraday indicative values (as applicable), and the applicability of Exchange rules and surveillance procedures made

in any filing to list a series of ETPs. As proposed, where an ETP fails to meet the Continued Listing Representations, the Exchange would initiate delisting proceedings pursuant to Rule 14.12.

The Exchange is also proposing to modify its rules such that issuers of securities listed under Rule 14.11 would be required to provide the Exchange with prompt notification after an Executive Officer⁴ of the [sic] becomes aware of any noncompliance. In addition, while listed ETPs are currently subject to the delisting process in Rule 14.12, the rules will be clarified to make this explicit. As proposed, Rule 14.12 will also be clarified to make explicit that an ETP that it is deficient under one or more listing standards may submit a plan to regain compliance to the Listing Qualifications Department. In this regard, the Exchange proposes to allow issuers of ETPs 45 calendar days to submit such a plan, which is consistent with deficiencies from most other rules that allow issuers to submit a plan to regain compliance.⁵ Exchange staff will review the plan and may grant a limited period of time for the ETP to regain compliance as permitted under Rule 14.12. If Exchange staff does not accept the plan, a Staff Delisting Determination will be issued, which could be appealed to a Hearings Panel pursuant to Rule 14.12(h).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁶ in

⁴ As defined in Rule 14.10(c)(1)A), the term “Executive Officer” means those officers covered in Rule 16a-1(f) under the Act.

⁵ The Exchange notes that the following deficiencies are allowed 45 calendar days to submit a plan to regain compliance: deficiencies from the standards of Rules 14.10(f)(3) (Quorum), 14.10(h) (Review of Related Party Transactions), 14.10(i) (Shareholder Approval), 14.6(c)(3) (Auditor Registration), 14.7 (Direct Registration Program), 14.10(d) (Code of Conduct), 14.10(e)(1)(D)(v) (Quorum of Limited Partnerships), 14.10(e)(1)(D)(vii) (Related Party Transactions of Limited Partnerships), or 14.10(j) (Voting Rights).

⁶ 15 U.S.C. 78f.

general and Section 6(b)(5) of the Act⁷ in particular in that it is designed 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, in general to protect investors and the public interest.

The proposed rule changes accomplish these objectives by enhancing the current continued listing standards by clarifying that most initial listing standards, as well as Continued Listing Representations, are considered continued listing standards. Additionally, the Exchange is proposing to require issuers to provide the Exchange with prompt notification after an Executive Officer of the [sic] becomes aware of any noncompliance and to clarify that deficiencies will be subject to potential trade halts and delisting proceedings pursuant to Rule 14.12. The Exchange believes that these amendments will enhance the Exchange's listing rules, thereby serving to improve the national market system and protect investors and the public interest.

The Exchange does not believe that the cleanup changes have any impact on the reasonable and equitable and not unfairly discriminatory nature of the proposal.

For these reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposed rule change to amend Rule 14.11 related to the listing of ETPs, the notification requirement in Rule 14.11(a), and the proposed related amendments to

⁷ 15 U.S.C. 78f(b)(5).

Rule 14.12 will have no impact on competition. Furthermore, since Commission staff has provided the same guidance regarding ETP continued listing requirements to all listing exchanges, the Exchange believes that there will be no effect on competition.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2016-80 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-2016-80. This file number should be included on the subject line if e-mail 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 website (<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 website 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-2016-80 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Brent J. Fields
Secretary

⁸ 17 CFR 200.30-3(a)(12).