

section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>3</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the

limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79069; File No. SR-BatsBZX-2016-26]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend BZX Rule 14.11(d) To Add the EURO STOXX 50 Volatility Futures to the Definition of Futures Reference Asset

October 7, 2016.

#### I. Introduction

On June 23, 2016, Bats BZX Exchange, Inc. ("Exchange" or "BZX") 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 amend BZX Rule 14.11(d) in order to add the EURO STOXX 50 Volatility ("VSTOXX") Futures ("VSTOXX Futures") to the definition of Futures Reference Asset. The proposed rule change was published for comment in the **Federal Register** on July 12, 2016.<sup>3</sup> On August 23, 2016, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On September 30, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>6</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

#### II. Exchange's Description of the Proposal

The Exchange proposes to amend BZX Rule 14.11(d) to add VSTOXX Futures to the definition of Futures Reference Asset.<sup>7</sup> By adding VSTOXX Futures to the definition of Futures Reference Asset, the Exchange would be permitted to generically list and trade Futures-Linked Securities linked to

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

<sup>3</sup> See Securities Exchange Act Release No. 78236 (Jul. 6, 2016), 81 FR 45185 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 78640, 81 FR 59257 (Aug. 29, 2016).

<sup>6</sup> In Amendment No. 1, the Exchange: (a) Clarified that an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure of Futures-Linked Securities to comply with the continued listing requirements; (b) provided additional information regarding the comparability of the VSTOXX Futures and the CBOE Volatility Index ("VIX") Futures currently included in the definition of Futures Reference Asset; (c) included additional background regarding the EURO STOXX 50 Index; (d) clarified that VSTOXX levels will be calculated by STOXX (as defined herein) and disseminated by major market data vendors such as Bloomberg and Thomson Reuters on a real-time basis throughout each trading day; and (e) made other grammatical corrections and typographical edits. Because the changes in Amendment No. 1 clarify certain statements in the proposal and do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 1, which amended and replaced the proposed rule change in its entirety, is available on the Commission's Web site at: <https://www.sec.gov/comments/sr-batsbzx-2016-26/batsbzx201626-1.pdf>.

<sup>7</sup> As defined in BZX Rule 14.11(d), "Futures Reference Asset" currently includes an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) Futures.

<sup>3</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

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

VSTOXX Futures pursuant to Rule 19b-4(e) under the Act.<sup>8</sup>

The Exchange has made the following representations and statements in describing the proposal, including information and background relating to VSTOXX and VSTOXX Futures.<sup>9</sup>

#### A. Description of VSTOXX and VSTOXX Futures

According to the Exchange, the VSTOXX was originally developed in 2005 and is based on EURO STOXX 50 Index<sup>10</sup> real-time option prices that are listed on the Eurex Deutschland ("Eurex").<sup>11</sup> The VSTOXX is designed to reflect market expectations of near-term to long-term volatility by measuring the square root of the implied variances across all options of a given time to expiration. The Exchange represents that the model for VSTOXX aims to make pure volatility tradable, *i.e.*, it should be possible to replicate the indices with an options portfolio that does not react to price fluctuations, but to changes in volatility only. The VSTOXX does not measure implied volatilities of at-the-money EURO STOXX 50 Index options, but the implied variance across all options of a given time to expiry.<sup>12</sup>

<sup>8</sup> 17 CFR 240.19b-4(e). Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to section (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class, and the SRO has a surveillance program for the product class.

<sup>9</sup> The Commission notes that additional information regarding EURO STOXX 50, VSTOXX, and VSTOXX Futures, among other things, can be found in the Notice. *See* Notice, *supra* note 3.

<sup>10</sup> The EURO STOXX 50 Index includes 50 stocks that are among the largest free-float market capitalization stocks from 12 Eurozone countries: Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain. Additional details of the EURO STOXX 50 Index, including information relating to weighting and eligibility requirements for components, among other things, can be found in the Notice and Amendment No 1 to the proposed rule change. *See* Notice and Amendment No. 1, *supra* notes 3 and 6.

<sup>11</sup> The Exchange represents that Eurex is a member of the Intermarket Surveillance Group ("ISG") and, accordingly, the Exchange may obtain information regarding trading in the underlying VSTOXX Futures contracts. For a list of the current members and affiliate members of ISG, *see* [www.isgportal.com](http://www.isgportal.com).

<sup>12</sup> The VSTOXX is calculated using a series of sub-indices that are based on put and call options on the EURO STOXX 50 Index in eight expiry months, with a maximum time to expiry of two years, in order to bracket a 30-day calendar period. VSTOXX levels will be calculated by STOXX and disseminated by major market-data vendors such as Bloomberg and Thomson Reuters. Additional details of the VSTOXX, including information relating to calculation methodology, can be found in the Notice and Amendment No 1 to the proposed

rule change. *See* Notice and Amendment No. 1, *supra* notes 3 and 6.

According to the Exchange, VSTOXX Futures are cash settled and trade between the hours of 7:30 a.m. and 10:30 p.m. Central European Time (2:30 a.m. and 5:30 p.m. Eastern Time).<sup>13</sup> The VSTOXX Futures contract value is 100 Euros per index point of the underlying and it is traded to two decimal places, with a minimum price change of 0.05 points (equivalent to a value of 5 Euros). The daily settlement price is determined during the closing auction of the respective futures contracts. The last trading day and final settlement day is 30 calendar days prior to the third Friday of the expiration month of the underlying options, which is usually the Wednesday prior to the second-to-last Friday of the respective maturity month.

#### B. Comparability of VSTOXX and VIX

According to the Exchange, the VSTOXX and VIX are nearly identical calculations of expected volatility in the EURO STOXX 50 Index and the S&P 500, respectively, based on pricing in the applicable options. The exchange represents that both processes involve screening of available option prices, followed by the construction of variance terms and then the subsequent weighting of those terms into the index values, and that the differences between the two processes are largely cosmetic. VSTOXX employs the following screens on EURO STOXX 50 Index options: (i) All option prices that are one-sided or without both a bid and ask are screened out; (ii) only options that are quoted within an established maximum spread are eligible for inclusion; and (iii) options that are too far out of the money (*i.e.*, that would change the index value less than 0.5 index points) are excluded. Similarly, VIX excludes options on the S&P 500 as follows: (a) All calls that have a bid price of zero are excluded, and, after two consecutive strikes have zero bid prices, no higher strikes are used; and (b) all puts that have a bid price of zero are excluded and after two consecutive strikes have zero bid prices, no lower strikes are used. The Exchange notes that, while these screens are not exactly the same, they are both designed to exclude options from their universe that do not have sufficient liquidity for the index to rely on their pricing for purposes of calculating volatility. In

addition, after choosing the applicable options universe, both VSTOXX and VIX use essentially identical formulas for calculating variance across the included options. Finally, after determining the variance, both VSTOXX and VIX use a substantively identical formula for weighting each of the individual variances in order to calculate the respective index value.

addition, after choosing the applicable options universe, both VSTOXX and VIX use essentially identical formulas for calculating variance across the included options. Finally, after determining the variance, both VSTOXX and VIX use a substantively identical formula for weighting each of the individual variances in order to calculate the respective index value.

#### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act<sup>14</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the Exchange's rules be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Commission notes that VIX Futures are currently included as a Futures Reference Asset for Futures-Linked Securities.<sup>17</sup> The Commission also notes that, based on the Exchange's representations, the VSTOXX and VIX employ nearly identical calculations of expected volatility in the EURO STOXX 50 Index and the S&P 500, respectively. In addition, both VSTOXX and VIX use essentially identical formulas for calculating variance across the included options, and, after determining the variance, use a substantively identical formula for weighting each of the individual variances in order to calculate the respective index value. Given the similarities between VSTOXX and VIX, which was previously approved by the Commission as a Futures Reference Asset, the Commission believes that it is consistent with the Act for the Exchange

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>16</sup> 17 U.S.C. 78f(b)(5).

<sup>17</sup> *See supra* note 7.

to amend its listing standard to include VSTOXX as a Futures Reference Asset.

In addition, the Commission notes that, notwithstanding the addition of VSTOXX Futures to the definition of Futures Reference Asset, the existing initial and continued listing criteria applicable to Linked-Securities, generally, and Futures-Linked Securities, specifically, would continue to apply. For example, the Exchange represents that any Futures-Linked Securities linked to VSTOXX Futures would be required to meet both the initial and continued listing standards under BZX Rule 14.11(d)(2)(K)(iv)(b) and (c) or be subject to delisting or removal proceedings. These initial and continued listing standards require, among other things: (i) The value of the Futures Reference Asset be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session; (ii) for Futures-Linked Securities that are periodically redeemable, the Intraday Indicative Value of the securities be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session; (iii) the aggregate market value or the principal amount of the Futures-Linked Securities be at least \$400,000; and (iv) the value of the VSTOXX Futures be calculated and available. In addition, any Futures-Linked Securities linked to VSTOXX Futures also would be required to meet the listing standards applicable to all Linked Securities under BZX Rule 14.11(d)(2). The Exchange represents that any securities it would list and trade pursuant to amended BZX Rule 14.11(d) would continue to comply with all Exchange rules applicable to the listing and trading of Linked Securities.

Further, the Exchange represents that its existing surveillance procedures are adequate to continue to properly monitor the trading of the Futures-Linked Securities linked to VSTOXX Futures in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange stated that it intends to utilize its existing surveillance procedures applicable to derivative products, which includes Linked Securities, to monitor trading in the Futures-Linked Securities. The Commission notes that Eurex, on which VSTOXX Futures trade, is a member of ISG, and the Exchange represents that it may obtain information regarding trading in the underlying VSTOXX Futures.

The Commission further notes that the issuer of a series of Linked

Securities is and will continue to be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Linked Securities, as provided under BZX Rule 14.11(d)(2)(F). Moreover, the Exchange represents that prior to listing Futures-Linked Securities linked to VSTOXX Futures pursuant to BZX Rule 14.11(c)(2)(K)(iv), an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure of the Futures-Linked Securities to comply with the continued listing requirements.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act<sup>18</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-BatsBZX-2016-26), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

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

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2016-24776 Filed 10-12-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79060; File No. SR-ISEGemini-2016-11]

### Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to a Proposal To Amend a Current Billing Practice With Respect to Billing Disputes

October 6, 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 September 22, 2016, ISE Gemini, LLC ("ISE Gemini" 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.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<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.

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 a current billing practice with respect to billing disputes.

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.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 its Schedule of Fees to change the timeframe within which Members must dispute billing. Today, ISE Gemini Members must submit all disputes no later than ninety calendar days after receipt of an Exchange invoice. After ninety calendar days, all fees assessed by the Exchange are considered final. The Exchange is proposing to amend the policy from ninety to sixty days to submit a dispute. Today, the NASDAQ PHLX LLC ("Phlx"), NASDAQ BX, Inc. ("BX"), and The NASDAQ Options Market LLC ("NOM") all have a sixty day timeframe within which to dispute option invoices.<sup>3</sup>

The Exchange provides Members with both daily and monthly fee reports and thus believes Members should be aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that Members dispute an invoice within this time period will encourage them to promptly review their invoices so that any disputed charges can be addressed in a

<sup>3</sup> See Phlx's Pricing Schedule. See also NOM and BX Rules at Chapter XV, Section 7.