TESTIMONY

OF

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CO-FOUNDER AND CHIEF EXECUTIVE OFFICER

GTS

BEFORE THE

HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CAPITAL MARKETS, SECURITIES AND INVESTMENT

"U.S. EQUITY MARKET STRUCTURE: A REVIEW OF THE EVOLUTION OF TODAY'S EQUITY MARKET STRUCTURE AND HOW WE GOT HERE"

JUNE 27, 2017

Introduction

Thank you Chairman Huizenga, Ranking Member Maloney and distinguished members of the Committee.

It is a personal honor for me to be here today to discuss with you these important market structure issues and how we can keep America #1 in capital markets and finance. Almost twenty-five years ago this summer, I started as a runner on the floor of the commodities exchange at the former World Trade Center, where the biggest piece of technology we had was a telephone. Approximately a decade later I felt technology could evolve our markets and bring enormous benefits to investors. At that point, I helped start my current company, GTS.

GTS is an electronic market maker. We provide offers to buy and sell thousands of investment instruments electronically across global markets. In the U.S. cash equity markets, on any given day we might trade between 3% and 5% of the consolidated daily volumes. All of our trading is quantitatively driven and automated using computers.

We are also the largest designated market maker ("DMM") at the New York Stock Exchange. This means we are uniquely and directly responsible and accountable to over 900 public companies for making sure there is ample liquidity for their investors to access throughout the day. That list includes some well-known companies such as Exxon Mobil, Berkshire Hathaway, AT&T and 161 other companies in the S&P 500. Most recently, we handled the IPO of the tech company Snapchat, which was the largest IPO of the past 3 years and raised nearly four billion dollars for the company and its workers.

Our goal at GTS is to do for the capital markets what Amazon has done for online commerce: Use technology in a responsible way to promote efficiency for public companies, and save their investor's money. We do this by adhering to our core principles of transparency and innovation. That yields investor confidence and lower costs. Our efforts help companies raise capital, grow and employ workers.

Evolution of our Capital Markets

We've witnessed the capital markets evolve tremendously since the days I was yelling buy and sell orders on the exchange floor. Like many industries, technology has transformed the business, making the markets more fair and efficient for all participants. And just like the conveniences and cost savings we enjoy using the internet and technology, the financial markets participate in the same way.

The emergence of advanced algorithmic trading, coupled with regulatory initiatives promulgated by the Securities and Exchange Commission (SEC) since 1996,[1] have resulted in highly competitive equity markets, in which trading is dispersed across a wide variety of market centers ranging from public venues to private trading pools to individual broker-dealers. As a result, investors are doing much better in today's algorithmic marketplace than they did in the old manual markets.[2]

For example, thanks to the advanced technology that electronic market makers have deployed, the cost to trade has declined dramatically. The average trading cost for investors has come down by more than 50 percent in the last 10 years.[3] This results in

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[1] Today's U.S. equity market structure was shaped by four main regulatory initiatives, including the Order Handling Rules in 1996, Regulation ATS in 1998, Decimalization in 2000 and Regulation NMS in 2005.

[2] In a speech on June 5, 204, former SEC Chair Mary Jo White highlighted lower execution costs, reduced intraday volatility and extremely narrow spreads as evidence that investors are better off in today's algorithmic marketplace. You can view the speech here: https://www.sec.gov/news/speech/2014-spch060514mjw

[3] Source: TABB Group Reg One Solutions, Effective/quoted spread for market orders of 100 – 1999 shares in the S&P 500. View the chart here: https://modernmarketsinitiative.org/wp-content/uploads/2016/03/Capture.jpg

more money in the accounts of investors when they retire. Due to today's reduced trading costs, investments in a retirement account over a 30 year period, will end up with a 30 percent higher return.[4]

There were concerns late last decade that the vulnerability of electronic systems would pose a threat to the markets. These concerns, which arose as a consequence of some high-profile market disruptions, such as the "flash crash" in 2010 and the Knight Capital trading incident in 2012, led the SEC and the Financial Industry Regulatory Authority (FINRA) to enact rules to improve market infrastructure.

For instance, market access rules enacted in 2010 now ensure that broker-dealers with direct access to trading on an exchange or alternative trading system have procedures in place to effectively manage the financial, regulatory and other risks of this business activity;[5] Regulation Systems Compliance and Integrity (Regulation SCI) enacted in 2014 strengthened the technology infrastructure of the U.S. securities markets by imposing requirements that reduce the occurrence of systems issues and improve resiliency when systems problems do occur;[6] and rules adopted in 2016 put in place a plan to create a single, comprehensive database known as the consolidated audit trail that will enable regulators to more efficiently track all trading activity in the U.S. equity markets.[7]

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[4] Hal Scott, "Why U.S. Investors are Better Off Today," Washington Times, January 21, 2016. According to the article, Vanguard estimates that the shift from the old market structure to today's automated market structure has reduced trading costs by 35-60 percent, resulting in a 32% greater yield for long-term investors. View the article here: http://www.washingtontimes.com/news/2016/jan/21/hal-scott-why-us-investors-are-better-off-today/

[5] View the SEC's press release on Rule 15c3-5 here: https://www.sec.gov/news/press/2010/2010-210.htm

[6] View the SEC's press release on Regulation SCI here: https://www.sec.gov/news/press-release/2014-260

[7] View the SEC's press release on the Consolidated Audit Trail here: https://www.sec.gov/news/pressrelease/2016-240.html

These positive and necessary advancements to our market structure – among others[8] - have resulted in tighter spreads, improved competition, improved operational resiliency and far greater efficiency.

Looking Ahead

Despite the improvements to our market structure, there is certainly more to be done. Former SEC Chair, Mary Jo White, said it best when she stated in a 2014 speech that "the current market structure is not fundamentally broken, let alone rigged. To the contrary, the equity markets are strong and generally continue to serve well the interests of both retail and institutional investors." She went on to say that "the largely positive data on broad market quality does not mean, however, that the current market structure [cannot be improved]."[9] I could not agree more.

However, we should not squander our resources trying to fix problems that don't exist. I've witnessed a lot of alarms being rang for problems that really aren't there, and then hear proposed solutions that are questionably positive in the grand scheme of things.

One example is a recent proposal by the BATS exchange to offer an alternative closing auction for securities listed on other markets.[10] This is nothing more than a money grab for Wall Street that is striking fear in many of the public companies and their investors that we are here to serve.

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[8] Other regulatory initiatives that have improved market infrastructure include single stock and market-wide circuit breakers, "limit up-limit down" mechanisms for individual stocks, and large trade reporting improvements.

[9] See a speech by Former SEC Chair, Mary Jo White, "Enhancing Our Equity Market Structure" delivered on June 5, 2014 here: https://www.sec.gov/news/speech/2014-spch060514mjw

[10] View the Bats proposed rule to Introduce Bats Market Close here: https://www.sec.gov/rules/sro/batsbzx/2017/34-80683.pdf

While GTS agrees that fragmentation has generally been good for the U.S. markets, fragmenting order flow in the closing auctions - as the Bats proposal attempts to do - will rob issuers of the right to choose which exchange manages the closing auction of their shares. The closing auctions are one of the critical features of listing on an exchange. Issuers want a centralized closing process for their shares because of the integrity of the closing price derived by the centralized auctions. If we take away this most basic and fundamental feature of our equity market structure, issuers will have yet one more reason to forgo going public and listing on an exchange. This would be disastrous for the U.S. capital markets and for its investors.

There are multiple small, mid, and large cap companies extremely alarmed by the Bats proposal. I've outlined and cited much of this specific outcry in a letter I filed recently with the SEC, and have attached that letter as an appendix to this testimony.

So here's what we should be spending our time on:

Greater Resilience to Cybersecurity Threats:

First, we need greater resilience to cybersecurity. This is often overlooked in the debate about market structure, but an all-electronic market, like many other technology-dependent sectors in the economy, needs to be vigilant on this issue. The SEC's own cyber-security sweep conducted in 2014 revealed that, of the more than 100 companies examined, 88 percent of the broker-dealers and 74 percent of the investment advisers had experienced a cyber-attack.[11]

[11] Craig Newman, "Securities and Exchange Commission Gets Tough on Cyber Security," The Financial Times, January 17, 2016. View the article here: https://www.ft.com/content/d5eda03e-b87c-11e5-b151-8e15c9a029fb?mhq5j=e2

Despite great work that the regulators[12] and industry have done, we need to double down on our efforts to prevent hacking and cyber-attacks. We need a better system for sharing information between key stakeholders, because we all have a collective interest in preventing such a problem.

Improve Investor Confidence by Identifying and Eliminating Fraud and Abuse:

Next, we need to do more to detect electronic trading fraud and abuse. I am a member of the FINRA market surveillance advisory group, whose goal is to assist FINRA in the construction of an advanced artificial intelligence (A.I.) and machine learning system to eradicate nefarious activity in our markets.[13] This is a great and impressive start, but more time and budget is necessary to complete these projects.

By leveraging today's technology, such as A.I. and machine learning, regulators and private industry can better identify and weed out bad actors in our markets. Doing so will improve investor confidence, which is essential to widespread participation in any market.

Improving the SIP :

And finally, we need to further improve the Securities Information Processor (SIP), which links the U.S. markets by processing and consolidating all protected bid/ask quotes and trades from every trading venue into a single, easily consumed data feed.

[12] The SEC, for example, has created a senior role specifically dedicated to coordinating the Commission's cybersecurity policy, has increased its attention to cyber threats with stepped up enforcement (see article above) and recently released its Office of Compliance Inspection and Examinations' 2017 priorities, which underscore the importance of strong cybersecurity compliance procedures and controls. You can view the priorities here: https://www.sec.gov/news/pressrelease/2017-7.html.

[13] Learn more about the Market Surveillance Advisory Group in FINRA's March 21, 2017 Special Notice here: http://www.finra.org/sites/default/files/notice_doc_file_ref/Special-Notice-032117.pdf

The SIP has been identified as a "single point of failure" by the SEC, which means it can halt or severely disrupt trading when a problem occurs.[14] In addition, the SIP has been blamed for creating a two-speed marketplace since SIP data moves slower than exchange direct-feed data.

Investors need the most accurate information possible when making investment decisions. While investors and market participants have equal access to all publically available data, the SIP is the most widely used and least expensive solution. The perception of a SIP feed that disseminates information at a significant disadvantage to direct feeds will eventually drain investor confidence. Therefore, regulators should consider proposals to further upgrade this critical piece of market infrastructure.

Conclusion:

Our markets are stronger and more efficient than ever and certainly the envy of the world. But we should not rest on our laurels. We need to avoid potentially costly experiments, and instead use those scarce resource to improve the markets, which will help advance investor confidence.

Thanks to the innovative and principled hard work of smart dedicated people from the industry and the various regulatory bodies, we can deploy these changes from a position of strength.

I appreciate the opportunity to present my views to the Committee today and I look forward to answering any questions you may have.

[14] See a speech by Former SEC Chair, Mary Jo White, "Enhancing Our Equity Market Structure" delivered on June 5, 2014 here: https://www.sec.gov/news/speech/2014-spch060514mjw

APPENDIX

Ari M. Rubenstein
Co-Founder & CEO
545 Madison Ave; 15th Floor
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June 22, 2017

Brent J. Fields, Esq.
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 25049

Re: SR-BATSBZX-2017-34

Dear Mr. Fields:

This letter sets forth the comments of GTS Securities LLC ("GTS") on the above-referenced proposed rule change by Bats BZX Exchange, Inc. ("BZX") to offer an alternative closing process for securities listed on other exchanges.[1] If approved, this alternative closing process (called the "Bats Market Close") would offer the ability for market on close orders ("MOC") to be matched on BZX at the official closing price of the primary listing markets of the New York Stock Exchange ("NYSE") and Nasdaq.

Introduction

GTS is a global electronic market making firm which provides liquidity in U.S. cash equities, ETFs, futures, foreign exchange and government debt. In U.S. cash equities, our overall volumes typically range from 3.5% to 5% of the average daily turnover. As a designated market maker ("DMM") on the NYSE, we are responsible for 1200 common stocks with a total market capitalization of $11.4 trillion. Our trading on the NYSE represents about 20-25% of the total notional volumes we trade each day. We are active on other equities markets such as BZX, BYX Exchange ("BYX"), EDGA Exchange ("EDGA"), EDGX Exchange ("EDGX"), Nasdaq and various alternative trading systems (called "dark pools").

In our role as a DMM on the NYSE, we have special obligations to provide liquidity throughout the trading day, and must maintain the orderly opening and closing auctions for our issuers. Among our issuers are 164 companies in the S&P 500. Our position as a DMM demands that we help build and sustain investor confidence in our markets. As such, we are quick to support new proposals that make our markets stronger.

In its proposal, BZX states that the Bats Market Close will "provide for a competitive alternative to sending orders to the primary listing market's closing auction."[2] BZX urges the SEC to approve its proposal so as to allow BZX to offer a "fee competitive alternative" to the primary listings markets' closing auctions.[3]

[1] See also the comments of Ari Rubenstein in a forthcoming Wall Street Journal op-ed. Ari Rubenstein, *It's the Companies, Stupid*, WALL STREET JOURNAL (forthcoming June 2017).

[2] Notice of Filing of a Proposed Rule Change to Introduce Bats Market Close, Exchange Act Release No. 80683 at 7 (May 16, 2017), 82 FR 23320, 23322 (May 22, 2017).

[3] *Id.* at 9, 82 FR at 23322.

Over the past twenty years, the SEC's policy of promoting competition has brought tremendous innovation and pricing efficiencies to the equity markets. The U.S. has thirteen national securities exchanges trading listed equities, including the new Investors Exchange ("IEX") with its novel market model. The SEC's adoption of Regulation ATS in 1998 permitted broker-dealers to compete with the equity exchanges in the form of dark pools and electronic liquidity providers.[4] In 2007, the implementation of the SEC's Regulation NMS further enhanced competition by requiring brokers to route to the market with the best price that is immediately accessible.[5] The competition created by the SEC's policies has benefited investors with lower transaction costs and the ability to choose among over 40 venues.

The BZX and BYX exchanges, along with EDGA and EDGX, have been leaders within this competitive arena by offering market participants highly innovative, advanced technology platforms and a low cost alternative. These Bats exchanges have excelled at pushing our markets forward to the benefit of all participants.

Firms like GTS with electronic market making models have stepped into this competitive fray and thrived. Our success is based on our ability to build and maintain the technology infrastructure necessary to trade in fragmented markets. We welcome innovation and competition in the marketplace.

There is no doubt that firms like ours would benefit from the potential reduction in execution fees should the BZX proposal be approved. GTS along with all the Wall Street intermediaries could save millions in reduced transaction costs. But we are deeply concerned that the BZX proposal will have serious and adverse consequences for public companies.

While we believe that fragmentation has generally been good for the U.S. markets, fragmenting order flow in the closing auctions will rob issuers of the right to choose which exchange manages the closing auction of their shares. The closing auctions are one of the critical features of listing on an exchange. Issuers want a centralized closing process for their shares because of the integrity of the closing price derived by the centralized auctions. If we take away this most basic and fundamental feature of our equity market structure, issuers will have yet one more reason to forgo going public and listing on an exchange. This would be disastrous for the U.S. capital markets and for its investors.

The Listed Companies

In our role as a DMM, we communicate with our issuers on a daily basis. Issuers need information about the market and the trading of their shares. We know firsthand that the integrity of their share price is crucial to our companies and their investors.

We are deeply concerned that the BZX proposal, if approved, would jeopardize the most relied upon price discovery mechanism in the U.S. capital markets. The BZX proposal is designed to divert market orders to BZX that would otherwise contribute to the quality of the auctions operated by NYSE and Nasdaq. BZX claims that taking these MOC orders out of the primary market auctions will not "compromis[e] the price discovery function performed by the primary listing market's closing auctions."[6] But diverting MOC orders from the

[4] Regulation of Exchanges and Alterative Trading Systems, Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998).

[5] Regulation NMS, Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[6] *Id.* at 6, 82 FR at 23321.

auctions has the potential to disrupt the balanced design of the auctions, and with it, the integrity of the closing price.

The market orders that participate in the closing auctions are a vital component of the liquidity ecosystem that make the closing price on the primary market reflective of investor demand. As described in more detail by NYSE and Nasdaq, it is precisely the centralization of different segments of the market that creates the reliability and value of their closing auction prices.[7]

The closing price set by the primary exchange is the most important trade of the day for publicly listed companies. It is sacrosanct and is often referred to as the *official* closing price by analysts and the financial press. The closing price is the price that thousands of ETFs and mutual funds rely on to calculate their value every trading day. These funds tie their valuation to the closing prices of the primary market precisely because these prices are seen as a reliable, daily valuation of a company's stock. Just as important, the closing price is used as the settlement price for derivatives transactions traded around the world. The public companies themselves use the closing price for various purposes in connection with their employee share purchase plans. In fact, the closing price is widely understood to be so critical for the valuation and the pricing of assets that the SEC and other securities regulators actively monitor the close for bad actors who might seek to undermine the closing price for their own manipulative purpose.[8]

Looking outside the U.S., the top listings markets operate a centralized auction using all market demand to set the closing price. If the US market were to experiment with de-centralizing the closing auctions, it would be an experiment without precedent and one that could seriously impair the confidence of public companies and investors alike.

Issuers who list on the NYSE and Nasdaq want all orders centralized in the pricing of their stock. Here is what some of the public companies we serve have told us:

> "*We depend on NYSE to oversee our close, and we don't want that to change. The closing auction was one of the factors that led us to list with NYSE in the first place.*" David Demshur, CEO, Core Laboratories[9]

> "*We at American Renal Associates Holdings, Inc. prefer that the NYSE continue to handle the closing auction of our stock. We see no reason to alter this deeply liquid and proven process and risk*

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[7] *See* Letter from Elizabeth K. King, Gen. Counsel & Corporate Sec'y, NYSE, to Brent J. Fields, Sec'y, Sec. & Exch. Comm'n (June 13, 2017); Letter from Edward S. Knight, Exec. Vice President & Gen. Counsel, Nasdaq, to Brent J. Fields, Sec'y, Sec & Exch. Comm'n (June 12, 2017) ("Nasdaq Letter"). As Nasdaq has stated, "Each and every order plays a key role in finding that optimal price, whether it be a Market On Close order, Limit On Close Order…or any other order residing in [the] order book." Nasdaq Letter, at 3.

[8] *See* Athena Capital Research, LLC, Exchange Act Release 73369, Advisers Act Release 3950 (Oct. 16, 2014). In explaining the importance of the integrity of the primary market closing auctions, the SEC stated that "[m]anipulating the closing process can increase market volatility (thereby frustrating the very purpose of the closing auction) and throw off critical metrics linked to the closing price of stocks. A stock's closing price is the data point most closely scrutinized by investors, securities analysts, and the financial media, and is used to value, and assess management fees on mutual funds, hedge funds, and individual investor portfolios." *Id.* at 3.

[9] Core Laboratories N.V. (NYSE: CLB) has a market capitalization of approximately $4.46 billion and serves oil companies around the globe by providing data and technology to optimize petroleum reservoir performance. The reservoir data and technology that Core Lab provides allow companies to determine the value and enhance the production of oil and natural gas. For a complete description of Core Lab's business, see CORE LABORATORIES, www.corelab.com (last visited June 21, 2017).

> *introducing uncertainty and volatility into the most critical period in the trading day.*" Darren Lehrich, SVP, Strategy & Investor Relations, American Renal Associates[10]
>
> "*We would hate to see the most important trade of the day fractured among Wall Street firms.*" Mark Stegeman, CFO, Turning Point Brands[11]
>
> "*It is important to keep a transparent, reliable and consistent closing auction on behalf of listed companies, so that it does not become fragmented and hurt true price discovery at a cost for profit only.*" Frank O'Neil, Chief Communication Officer & Senior VP, ProAssurance Corp.[12]

Those are just a sample of some of the small and midcap companies who have directly voiced their concerns. We know of other large companies also concerned including International Paper (NYSE: IP), a $23 billion company with over 55,000 employees.

These issuers represent just some of the companies that chose to list their shares on an exchange because of the confidence they have in the exchange market processes. These are companies that have tapped the U.S. capital markets to help them grow and create jobs in our country.

The slower pace of companies seeking to IPO over the years and the preference of many smaller companies to remain private has been a great concern to Congress and the SEC. There have been efforts to reverse this trend including the Jumpstart Our Business Startups Act and the industry-wide "tick pilot" to give greater market making support to these companies. In his written testimony for his confirmation hearing, SEC Chairman Jay Clayton expressed concern over the lack of incentives for companies to IPO stating "….it is clear that our public capital markets are less attractive to business than in the past. As a result, investment opportunism for Main Street investors are more limited. Here, I see meaningful room for improvement."[13] Approval of the BZX proposal and taking away the centralized closing auctions would simply add one more reason for a company to resist going public and listing on an exchange.

Wall Street exists because of the stocks of public companies and these companies are the foundation of our robust equity and options trading markets. We need to listen to what public companies say they need and want from the market structure and not just implement what will benefit Wall Street intermediaries. Depriving issuers of the critical function provided by the listing exchanges imperils the long-standing and important

[10] American Renal Associates Holdings, Inc. (NYSE: ARA) has a market capitalization of approximately $576 million and provides outpatient dialysis services to patients with chronic kidney disease. ARA uses a physician joint venture model, partnering with physicians to own and operate its dialysis clinics. *See* AMERICAN RENAL ASSOCIATES, www.americanrenal.com (last visited June 21, 2017).

[11] Turning Point Brands, Inc. (NYSE: TPB) has a market capitalization of approximately $306.8 million and manufactures and markets a variety of tobacco and nontobacco smoking products. Turning Point offers several categories of products, including smoking, smokeless, vapor and non-nicotine. *See* TURNING POINT BRANDS, www.turningpointbrands.com (last visited June 21, 2017).

[12] ProAssurance Corp. (NYSE: PRA) has a market capitalization of approximately $3.21 billion and is a healthcare-focused insurance writer. ProAssurance provides insurance to cover healthcare professional liability, products liability for medical technology and life sciences, legal professional liability, and workers' compensation. *See* PROASSURANCE, www.proassurance.com (last visited June 21, 2017).

[13] Jay Clayton, Nominee for Chairman, Sec. & Exch. Comm'n, Opening Statement to the Senate Committee on Banking, Housing and Urban Affairs (Mar. 23, 2017).

relationship between issuers and their exchanges. If Wall Street does not continue to provide a system that supports the public companies, then these companies will go elsewhere or will not go public at all.

The Fees for Closing Auction Transactions

The BZX proposal is an attempt by Bats to introduce pricing competition to closing auction fees. There is no denying that the intense competition for transactions during the regular trading day has benefited investors. Spreads have tightened for stocks to just pennies even though this competition has significantly fragmented the equity markets.

It is appealing to think that every feature of our markets could be improved by more competition. But the closing auctions are simply different than continuous trading. The closing auctions cannot tolerate the fragmentation that exists in the regular trading day. Fragmenting the close would seriously undermine the integrity of the prices discovered in the auctions.

Should there be pricing issues for stocks within the continuous market, there are many regulatory mechanisms in place (e.g., public quote streams, last sale reporting, etc.) to bring prices back in line. Investors often have time and the discretion during the trading day to wait for the most opportune price. As well, there is time to fix a mispriced transaction and with it, the opportunity to maintain a fair and orderly market. But the auctions are different by their nature given that the closing price is determined at a single point in time, taking into account all trading interest at that time. Introducing any unreliability into the closing auction would be a mistake. Accordingly, it is critical that the closing auction include the full breadth of the market demand so that the closing price is an accurate reflection of the company's market price. As such, to be of value, closing auctions demand the centralization of available orders.

To be clear, we do not believe the fees charged by the NYSE and Nasdaq for participating in the primary markets' closing auctions to be excessive. In fact, the costs of participating in the closing auctions seem to be in line with what it costs to trade on a variety of venues during the trading day.

For example, the average cost per share for a medium sized participant on the closing auction of the NYSE is $.0009 per share. This charge is in line with what IEX charges the majority of their participants during the trading day – $.0009 per share -- in the continuous market. The typical cost to trade in a dark pool during the continuous market is $.001 per share.[14]

We do not see a problem that needs fixing -- and certainly not with a solution that could imperil the most important trade of the day. The closing auctions work well and represent years of investment and fine tuning by the primary markets.

By their nature, the closing auctions thrive based on the centralization of order flow. There is nothing "anticompetitive" about wanting to protect this centralization. There is plenty of competition for corporate listings between the NYSE and Nasdaq, BZX and perhaps soon IEX.[15] If BZX wants to offer pricing

[14] We do not mean to suggest that the fees charged by NYSE and Nasdaq for the closing auctions should not be subject to proper vetting and review by the SEC and market participants. The fees for these auctions must be set at reasonable levels so as to ensure fair access and full participation of all investors.

[15] IEX's approval by the SEC as a national securities exchange in June 2016 included the approval of rules applicable to the qualification, listing and delisting of companies on IEX. See Application of Investors' Exchange, LLC for Registration as a National

competition in primary listing auctions, BZX has every opportunity to compete by attracting listings of its own. With its own listings, BZX can operate a closing auction for the public companies that choose BZX, not the companies that have chosen another listing venue.

Increasing Operation Risk and Complexity

BZX claims that allowing a fragmented closing process will help mitigate operational risk. We fail to see how adding more complexity at the end of the trading day will mitigate operational risk for traders or for regulators.

As described by BZX in its proposal, the cut-off time for entering MOC orders in the Bats Market Close will be 3:35 ET. At the MOC cut-off time, BZX will match all the buy and sell MOC orders based on time priority. Any remaining balance of unmatched shares will be cancelled back to members. At this point in the process, given that the cut-off time for the primary exchanges is 3:45 for the NYSE and 3:50 ET for Nasdaq, the unfilled market orders must be handled quickly to ensure they get the best opportunity for a closing print. As a result, the BZX proposal will force market participants to send MOC orders from one exchange to another just prior to the relevant cut-off times for the closing auctions.

Should there be technology disruptions at an exchange or even at a BZX member firm near the end of the day, the added complexity of sending these orders from market to market will put even more stress on the systems of the exchanges. Why should we introduce more complexity and the potential for disruption to the most critical point of the trading day? Given the importance of the closing auctions, we suggest that the SEC and market participants put renewed focus on strengthening the stability of these auctions, rather than making them more complex. The BZX proposal seems at odds with the efforts of the SEC through its adoption of Regulation SCI to make sure the exchanges have the operational capacity to promote the maintenance of fair and orderly markets.

In addition to the operational complexity the proposal would introduce, it is not clear whether BZX has considered what additional complications a fragmented close will have on the market surveillance systems of the self-regulatory organizations, especially those market surveillance systems of the primary listing markets. Should the SEC allow order flow to be fragmented among multiple exchanges for the closing auction process, it is certain that surveillance of the close will become more difficult and the costs for this surveillance will go up.

Conclusion

We appreciate the opportunity to provide our views on the BZX proposal to offer an alternative closing process for securities listed on other exchanges. While fee reductions would benefit firms like GTS, we do not believe the proposal is in the public interest.

The BZX proposal is a solution in search of a problem. We should not get carried away with the idea that our markets must compete just for the sake of competing. The competition we promote must be for the purpose of making our market stronger and supporting public companies.

Securities Exchange, Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016). The IEX has announced that it plans to begin its listing program in 2017 and has recently proposed listing applications and forms applicable to companies applying for listing, among other things. *See* Proposed Rule Change to Specify the Required Forms of Listing Application, Agreement and Other Documentation, Exchange Act Release No. 80453 (Apr. 13, 2017), 82 FR 18507 (Apr. 19, 2017); *see also* Proposed Rule Change Related to Continued Listing Standards for Exchange Traded Products, Exchange Act Release No. 80905 (June 12, 2017), 82 FR 27748 (June 16, 2017).

We are deeply concerned that allowing fragmentation of the closing auctions could destabilize the market close. Issuers depend on the established, orderly procedure of today's market close and reliable closing prices. De-centralizing the orders in the closing auctions would radically alter the way exchanges work and would hurt public companies and their investors. Small and midcap firms want and need the primary listing exchange to manage the closing process.

The BZX proposal may help members of BZX save on execution costs, but at the expense of our capital markets. The central question is, do the markets exist to serve the intermediaries or to serve the public companies, their workers, their investors and their retirement savings?

Sincerely,

Ari M. Rubenstein
Co-Founder and Chief Executive Officer
GTS

cc: Jay Clayton, Chairman, U.S. Securities and Exchange Commission
Michael S. Piwowar, Commissioner, U.S. Securities and Exchange Commission
Kara M. Stein, Commissioner, U.S. Securities and Exchange Commission