



8011-01p
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71851; File No. 4-631]

Joint Industry Plan; Order Approving the Seventh Amendment to the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

April 3, 2014.

I. Introduction

On February 24, 2014, NYSE Euronext, on behalf of New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC (“NYSE MKT”), and NYSE Arca, Inc. (“NYSE Arca”), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the “Participants”), filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 thereunder,² a proposal to amend the Plan to Address Extraordinary Market Volatility (“Plan”).³ The proposal represents the seventh amendment to the Plan (“Seventh Amendment”), and reflects changes unanimously approved by the Participants. The Seventh Amendment to the Plan: (i) Extends the

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ See Letter from Martha Redding, Chief Counsel, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated February 21, 2014 (“Transmittal Letter”).

pilot period of the Plan to February 20, 2015; and (ii) makes conforming changes to Appendix B of the Plan regarding when the Participants are required to submit specified summary data to the Commission. The Seventh Amendment was published for comment in the Federal Register on March 11, 2014.⁴ The Commission received no comment letters in response to the Notice. This order approves the Seventh Amendment to the Plan.

II. Description of the Proposal

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in “NMS Stocks,” as defined in Rule 600(b)(47) of Regulation NMS under the Act.⁵ The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified price bands.⁶ These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.⁷ The price bands would be calculated by the Securities Information Processors (“SIPs” or “Processors”) responsible for consolidation of

⁴ See Securities Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (“Notice”).

⁵ 17 CFR 242.600(b)(47). See also Section I(H) of the Plan.

⁶ See Section V of the Plan.

⁷ Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan.

information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.⁸ Those price bands would be based on a Reference Price⁹ for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter¹⁰ below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands would be calculated by applying double the Percentage Parameters as set forth in Appendix A of the Plan.

The Processors would also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new price bands would be disseminated, and the current Reference Price would remain the effective Reference Price. If the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the

⁸ 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

⁹ See Section I(T) of the Plan.

¹⁰ As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (i.e., stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of \$1.00 or more would be five percent and less than \$1.00 would be the lesser of (a) \$0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (i.e., all NMS Stocks other than those in Tier 1) with a Reference Price of \$1.00 or more would be 10 percent and less than \$1.00 would be the lesser of (a) \$0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of \$0.75 or more and up to and including \$3.00. The Percentage Parameter for stocks with a Reference Price below \$0.75 would be the lesser of (a) \$0.15 or (b) 75 percent. See Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012.

Pro-Forma Reference Price would become the Reference Price, and the Processors would disseminate new price bands based on the new Reference Price. Each new Reference Price would remain in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors would be required to disseminate such National Best Bid¹¹ or National Best Offer¹² with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security would enter a Limit State,¹³ and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.¹⁴ All trading would immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading Pause, which would be applicable to all markets trading the security.

¹¹ 17 CFR 242.600(b)(42). See also Section I(G) of the Plan.

¹² Id.

¹³ A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. See Section VI(B) of the Plan.

¹⁴ See Section I(D) of the Plan.

These limit up-limit down requirements would be coupled with Trading Pauses¹⁵ to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the Plan, all trading centers¹⁶ in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and Trading Pause requirements specified in the Plan.

Under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks,¹⁷

¹⁵ The primary listing market would declare a Trading Pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the Trading Pause, but all bids and offers may be displayed. See Section VII(A) of the Plan.

¹⁶ As defined in Section I(X) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

¹⁷ 17 CFR 242.600(b)(47).

thereby protecting investors and promoting a fair and orderly market.¹⁸ In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.¹⁹ The initial date of Plan operations was April 8, 2013.²⁰

B. Seventh Amendment to the Plan

The Seventh Amendment proposes two changes to the Plan. First, the Participants propose to amend the Plan to extend the pilot period of the Plan to February 20, 2015. Second, the Participants propose to amend Appendix B of the Plan regarding when the Participants are required to submit specified summary data assessments to the Commission to require that the assessments be provided by September 30, 2014. The Commission received no comment letters in response to the Notice.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Seventh Amendment is consistent with the requirements of the Act and the rules and regulations thereunder.²¹ Specifically, the Commission finds that the Seventh Amendment is consistent with Section 11A of the Act²² and Rule 608 thereunder²³ in that it is appropriate in the public interest, for the protection of investors

¹⁸ See Transmittal Letter, supra note 3.

¹⁹ The limit up-limit down mechanism set forth in the Plan would replace the existing single-stock circuit breaker pilot. See e.g., Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033).

²⁰ See Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013).

²¹ In approving the Seventh Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²² 15 U.S.C. 78k-1.

²³ 17 CFR 242.608.

and the maintenance of fair and orderly markets, removes impediments to, and perfects the mechanism of, a national market system.

First, the Participants proposed to amend Section VIII(C) of the Plan to to extend the current one-year pilot, which is scheduled to end on April 8, 2014, to have the pilot set to end on February 20, 2015.²⁴ As initially contemplated, the Plan would have been fully implemented across all NMS Stocks within six months of initial Plan operations, which meant there would have been full implementation of the Plan for six months before the end of the pilot period. However, pursuant to the Fourth Amendment to the Plan,²⁵ the Participants amended Section VIII.B of the Plan, which modified the implementation schedule of Phase II of the Plan to extend the time period when the Plan would fully apply to all NMS Stocks. Accordingly, the Plan was not implemented across all NMS Stocks until December 8, 2013.²⁶ Subsequently, the Sixth Amendment to the Plan²⁷ was filed on an immediately effective basis to extend the implementation date for full implementation of the Plan to February 24, 2014. Prior to February 24, 2014, the Plan was only in effect from 9:30 a.m. E.T. to 3:45 p.m. E.T., and did not include the fifteen minutes of trading preceding the close.²⁸ Accordingly, if the pilot were allowed to expire as currently scheduled on April 8, 2014, there will be less than two months of full operation of the Plan before the end of the pilot period. The Participants note that this short period of full implementation of the Plan will not provide sufficient time for either the

²⁴ See Notice, supra, note 4 at 13697.

²⁵ See Securities Exchange Act Release No. 69287 (April 3, 2013), 78 FR 21483 (April 10, 2013).

²⁶ See Notice, supra, note 4 at 13697.

²⁷ See Securities Exchange Act Release No. 71247 (January 7, 2014), 79 FR 2204 (January 13, 2014).

²⁸ See Notice, supra, note 4 at 13697.

Participants or the Commission to assess the impact of the Plan and determine whether the Plan should be modified prior to approval on a permanent basis, and that the pilot period should be extended to provide sufficient time to review data based on full implementation of the Plan and assess the operation of the Plan.²⁹ The Participants further represent that the proposed amendment is consistent with the approval order for the Plan, in which the Commission stated that having a pilot period would allow “the public, the Participants, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to approval on a permanent basis.”³⁰

Second, the Participants propose to amend Section III to Appendix B of the Plan to delete the requirement that assessments of Plan operations be provided at least two months prior to the end of the pilot period, and instead propose that the assessments be provided by September 30, 2014, nearly five months before the end of the pilot period.³¹ As originally contemplated, such assessments would have been based on approximately four months’ worth of data from full implementation of the Plan. Under the proposal, such data will be based on nearly seven months of data from full operation of the Plan, providing the Participants with more data on which to base their assessments. The Participants continue to believe that they would be able to assess the Plan based on a similar data set, and that revising the time when such assessments would be provided to the Commission would provide the Participants with sufficient time to conduct such assessments.³² In addition, providing the Commission with such assessments earlier than two months before the end of the pilot period will provide additional time for the Commission to

²⁹ See id.

³⁰ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 at 33508 (June 6, 2012).

³¹ See Notice, supra, note 4 at 13698.

³² See id.

review such assessments to inform any determination of whether the Plan should be modified prior to approval on a permanent basis.

For the reasons noted above, the Commission believes that the proposal to amend Section VII(C)(1) and Section I of Appendix A of the Plan is consistent with Section 11A of the Act. The Commission reiterates its expectation that the Participants will continue to monitor the scope and operation of the Plan and study the data produced, and will propose any modifications to the Plan that may be necessary or appropriate.³³ Therefore, the Commission finds that the Seventh Amendment to the Plan is consistent with Section 11A of the Act³⁴ and Rule 608 thereunder.³⁵

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act³⁶ and Rule 608 thereunder,³⁷ that the Seventh Amendment to the Plan (File No. 4-631) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Kevin M. O'Neill,
Deputy Secretary.

³³ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

³⁴ 15 U.S.C. 78k-1.

³⁵ 17 CFR 242.608.

³⁶ 15 U.S.C. 78k-1.

³⁷ 17 CFR 242.608.

³⁸ 17 CFR 200.30-3(a)(29).

[FR Doc. 2014-07881 Filed 04/08/2014 at 8:45 am; Publication Date: 04/09/2014]