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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79845; File No. 4-631)

Joint Industry Plan; Order Approving the Twelfth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

January 19, 2017

I. Introduction

On September 19, 2016, NYSE Group, Inc., on behalf of the other parties¹ to the National Market System Plan to Address Extraordinary Market Volatility (the “Plan”), filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)² and Rule 608 thereunder,³ a proposal to amend the Plan.⁴ The proposal represents the twelfth amendment to the Plan, and reflects proposed changes unanimously approved by the Participants (“Twelfth Amendment”). The proposed Twelfth Amendment was published for comment in the Federal Register on December 2, 2016.⁵ The

¹ NYSE Group, Inc. filed on behalf of the following parties to the Plan: Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (“Participants”).

² 15 U.S.C. 78k-1.

³ 17 CFR 242.608.

⁴ See Letter from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated September 16, 2016.

⁵ See Securities Exchange Act Release No. 79410 (November 28, 2016), 81 FR 87114 (“Notice”).

Commission received two comment letters regarding the amendment.⁶ On January 17, 2017, the Participants submitted a letter to the Commission related to the Twelfth Amendment, which requests that the Commission modify the Twelfth Amendment to retain provisions in the Plan related to Straddle States.⁷ This order approves the Twelfth Amendment to the Plan, as modified.

II. Description of the Proposal

In the Twelfth Amendment, the Participants propose to implement a modified reopening process following a Trading Pause.⁸ In particular, the Participants propose to amend the Plan to provide that a Trading Pause will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures, even if such reopening is more than 10 minutes after the beginning of a Trading Pause, require that trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock, and delete language made unnecessary in light of the proposed reopening procedures.⁹ In addition, the Participants propose to address the situation where there is no Reopening Price from the

⁶ See Letters from Mortimer J. Buckley, Chief Investment Officer, Vanguard, dated December 23, 2016 (“Vanguard Letter”); and David W. Blass, General Counsel, Investment Company Institute, dated December 22, 2016 (“ICI Letter”) to Brent J. Fields, Secretary, Commission.

⁷ See Letter from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated January 13, 2017 (“Modification Letter”).

⁸ Unless otherwise specified, the terms used herein have the same meaning as set forth in the Plan.

⁹ The Primary Listing Exchanges filed proposed rule changes pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, relating to the changes to the reopening procedures proposed in the Twelfth Amendment. See Securities Exchange Act Release Nos. 79162 (October 26, 2016), 81 FR 75875 (November 1, 2016) (SR-BatsBZX-2016-61; 79158 (October 26, 2016), 81 FR 75879 (November 1, 2016) (SR-NASDAQ-2016-131); and 79107 (October 18, 2016), 81 FR 73159 (October 24, 2016) (SR-NYSEArca-2016-130). See also Securities Exchange Act Release No 79846, (January 19, 2017) (SR-NYSEArca-2016-130).

Primary Listing Exchange due to a systems or technology issue and make related changes regarding how the Reference Price would be determined and Price Bands calculated and disseminated following a resumption of trading. Further, the Participants propose to amend the Plan to provide that if an NMS Stock is in a Trading Pause during the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall attempt to execute a closing transaction using its established closing procedures. Finally, the Participants propose to clarify in the Plan the limited circumstances in which a trading center may calculate and apply Price Bands when a Reference Price is available but Price Bands have not been disseminated by the Processor (“Synthetic Price Bands”).

Finally, in the Twelfth Amendment, the Participants propose to remove provisions related to Straddle States. However, as described in the Modification Letter, the Participants have requested the Commission to modify the Twelfth Amendment to retain the provisions related to Straddle States in the Plan.

III. Summary of Comment Letters

The Commission received two comment letters on the proposed Twelfth Amendment, both supporting the proposed changes to the Plan related to the reopening process. One commenter noted that the proposed amendments to the Plan along with the related proposed rule changes submitted by the exchanges¹⁰ “should improve the transparency of the reopening process, allow reopening auctions to establish more accurate prices, and make it less likely that trading in a security will be halted again shortly after trading resumes.”¹¹ This commenter further noted that “[I]mplementing these proposals also should increase market confidence by

¹⁰ See supra note 9.

¹¹ See ICI Letter, supra note 6 at 2.

reducing the likelihood of the Limit Up-Limit Down Plan creating confusion during volatile markets, when clarity and certainty are most important.”¹² This commenter urged the Commission to approve the proposed Twelfth Amendment and corresponding rule changes, but noted that the Twelfth Amendment “does not address the discordance between the rules governing clearly erroneous executions and the limit up-limit down price bands, which contributes unnecessarily to uncertainty in the equity markets in volatile times.”¹³ The second commenter urged the Commission to approve the Twelfth Amendment “without delay” and before considering a change to the Plan recommended by the Equity Market Structure Advisory Committee in which “securities in a limit state would not be halted pursuant to existing rules, but would be permitted to trade within established price bands.”¹⁴ This commenter believes that “the Twelfth Amendment is an important step towards improving the equity markets and minimizing the likelihood of an event like August 24, 2015.”¹⁵

IV. Discussion and Commission Findings

Rule 608 under Regulation NMS provides that the Commission shall approve an NMS plan amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that the plan amendment is “necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system, or otherwise in furtherance of the purposes of the Act.”¹⁶ The Commission finds that the Twelfth Amendment,

¹² Id.

¹³ Id.

¹⁴ See Vanguard Letter, supra note 6, at 2.

¹⁵ Id.

¹⁶ 17 CFR 242.608(b)(2).

as modified, is consistent with Section 11A of the Act¹⁷ and Rule 608 thereunder¹⁸ because, for the reasons discussed below it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and that it removes impediments to, and perfects the mechanism of, a national market system. The Commission notes that the Participants proposed the Twelfth Amendment to address issues experienced on August 24, 2015. In particular, the Participants believe that the changes to the Plan set forth in the Twelfth Amendment should reduce the number of repeat Trading Pauses in a single NMS Stock and establish a more standardized process across Primary Listing Exchanges in reopening trading following a Trading Pause.

A. Coordinated Reopening Procedures after a Trading Pause

The Participants propose to remove the language in Plan Section VII(B)(3) that permits trading centers to begin trading an NMS Stock ten minutes after declaration of a Trading Pause in an NMS Stock if the Primary Listing Exchange has not either reported a Reopening Price or declared a Regulatory Halt.¹⁹ Accordingly, Trading Pauses would continue until a Primary Listing Market reports a Reopening Price, except in limited circumstances discussed below. In addition, the Participants propose to provide that trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock.

¹⁷ 15 U.S.C. 78k-1.

¹⁸ 17 CFR 242.608.

¹⁹ The Participants also propose to amend Section V(C) of the Plan to remove language, which describes the first Reference Price in situations when a Primary Listing Market does not reopen within ten minutes after the beginning of a Trading Pause. The Commission believes that with the adoption of the proposed amendments described above, the Plan text in Section V(C) is no longer necessary.

The Commission believes that it is appropriate in the public interest, for the protection of investors and the maintenance of a fair and orderly market to provide that a Trading Pause continue until the Primary Listing Exchange has reopened trading using its established reopening procedures, even if such reopening is more than 10 minutes after the beginning of a Trading Pause, and to require that trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock. The Commission believes that these two provisions together support a more standardized process for reopening trading after a Trading Pause has been declared. Further, these provisions ensure that trading would not resume after a Trading Pause without Price Bands.

B. Systems and Technology Issues

The Participants propose to amend Section VII(B)(2) of the Plan to clarify that the only time trading centers may resume trading in an NMS Stock in the absence of a Reopening Price from the Primary Listing Exchange is if the Primary Listing Exchange notifies the Processor that it is unable to reopen trading due to a systems or technology issue. The Commission believes that this change is appropriate in the public interest, for the protection of investors and the maintenance of a fair and orderly market because if a Primary Listing Exchange is unable to reopen trading due to a systems or technology issue, trading should be permitted to resume in that NMS Stock on other trading centers.

Further, the Participants propose to add a new sentence to Section V(C)(1) of the Plan to specify that if the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue, the next Reference Price would be the last effective Price Band that was in a Limit State before the Trading Pause. The Participants also propose to use this process for determining a Reference Price in situations where the Primary

Listing Exchange reopens trading with a quotation that has a zero bid or offer, or both. The Commission believes that it is appropriate to use the last effective Price Band as the new Reference Price in these situations. As noted by the Participants, using the last effective Price Band that triggered the Trading Pause should be a closer approximation of the most recent trading in the NMS Stock, which should help to prevent repeat Trading Pauses.

The Participants also propose to provide that if, under Section VII(B)(2), the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue and it has not declared a Regulatory Halt, the Processor will calculate and disseminate Price Bands by applying triple the Percentage Parameters set forth in Appendix A to the Plan for the first 30 seconds such Price Bands are disseminated. The Commission notes that the Plan currently reflects that triple Percentage Parameters are applied if trading resumes ten minutes after a Trading Pause has been declared when the Primary Listing Exchange has not issued a Reopening Price. Accordingly, the Commission believes that that it is appropriate to apply triple Percentage Parameters to the new limited instances when a Reopening Price is not disseminated.

Finally, the Participants propose to amend Section VII(B)(4) of the Plan to clarify that the Processor shall update the Price Bands, as set forth in Section V(C)(1)-(2) of the Plan, after receiving notification from the Primary Listing Exchange of a Reopening Price following a Trading Pause (or a resume message in the case of a reopening quote that has a zero bid or zero offer, or both), or notification that the Primary Listing Exchange is unable to reopen trading following a Trading Pause due to a systems or technology issue. In instances when the Primary Listing Exchange is unable to reopen due to a systems or technology issue, the Processor shall update the Price Bands no earlier than ten minutes after the beginning of the Trading Pause. The

Commission believes that these changes are appropriate to clarify the requirements of the Processor to update the Price Bands in all situations following a Trading Pause.

C. Trading Pauses Before the End of Regular Trading Hours

The Participants propose to amend Section VII(C)(1) of the Plan to provide that if an NMS Stock is in a Trading Pause during the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall, rather than seek to resume trading through its established reopening procedures, attempt to execute a closing transaction using its established closing procedures. The Commission believes that this change is appropriate in the public interest, for the protection of investors and the maintenance of a fair and orderly market to accommodate the new standardized process for reopening trading. As noted above, all trading centers must wait to resume trading in an NMS Stock subject to a Trading Pause until the Primary Listing Exchange has reported a Reopening Price. It is possible that a Trading Pause that was declared before the last ten minutes of trading before the end of Regular Trading Hours could be extended until after the last ten minutes of trading before the end of Regular Trading Hours. The Commission believes that it is appropriate to amend the Plan to reflect in such case, that trading in the NMS Stock should not resume, and instead the Primary Listing Exchange should attempt to execute a closing transaction using established closing procedures.

D. Synthetic Price Bands

The Participants propose to amend Section V(A)(1) of the Plan to clarify that if the Processor has not yet disseminated Price Bands, but a Reference Price is available, a trading center may calculate and apply Synthetic Price Bands based on the same Reference Price that the Processor would use for calculating such Price Bands until the trading center receives Price Bands from the Processor. The Commission believes that this change is appropriate in the public

interest, for the protection of investors and the maintenance of a fair and orderly market because it will make clear that, while a trading center may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock, when a Reference Price is available, a trading center is permitted to calculate and apply its own Synthetic Price Bands before Price Bands have been received from the Processor.

E. Straddle States

In the Twelfth Amendment, the Participants proposed to remove provisions in the Plan related to Straddle States. In its Modification Letter, the Participants request that the Commission approve the Twelfth Amendment, as modified, to retain the provisions related to Straddle States.²⁰ The Participants note that they intend to further study alternatives to eliminating Straddle States from the Plan. The Commission deems it necessary to modify the Twelfth Amendment so that the provisions related to Straddle States are retained. The Commission believes that further data analysis is appropriate to evaluate alternatives to eliminating Straddle States from the Plan.

For the reasons noted above, the Commission finds that the Twelfth Amendment to the Plan, as modified, is consistent with Section 11A of the Act²¹ and Rule 608 thereunder.²²

V. Conclusion

²⁰ See Modification Letter, supra note 7.

²¹ 15 U.S.C. 78k-1.

²² 17 CFR 242.608. Consistent with their representations set forth in the Notice, the Commission expects the Participants to implement the Twelfth Amendment, as modified, no later than six months after the date of this order.

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act²³ and Rule 608 thereunder,²⁴ that the Twelfth Amendment to the Plan (File No. 4-631), as modified, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Eduardo A. Aleman
Assistant Secretary

²³ 15 U.S.C. 78k-1.

²⁴ 17 CFR 242.608.

²⁵ 17 CFR 200.30-3(a)(29).

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