



8011-01
SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80203; File No. 4-631]

Joint Industry Plan; Notice of Filing of the Thirteenth 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, NYSE National, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

March 10, 2017

I. Introduction

On February 13, 2017, NYSE Group, Inc., on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility (“the Plan”):¹ Bats BZX

¹ On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. See Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4-631). On February 20, 2013, the Commission noticed for immediate effectiveness the Second Amendment to the Plan. See Securities Exchange Act Release No. 68953, 78 FR 13113 (February 26, 2013). On April 3, 2013, the Commission approved the Third Amendment to the Plan. See Securities Exchange Act Release No. 69287, 78 FR 21483 (April 10, 2013). On August 27, 2013, the Commission noticed for immediate effectiveness the Fourth Amendment to the Plan. See Securities Exchange Act Release No. 70273, 78 FR 54321 (September 3, 2013). On September 26, 2013, the Commission approved the Fifth Amendment to the Plan. See Securities Exchange Act Release No. 70530, 78 FR 60937 (October 2, 2013). On January 7, 2014, the Commission noticed for immediate effectiveness the Sixth Amendment to the Plan. See Securities Exchange Act Release No. 71247, 79 FR 2204 (January 13, 2014). On April 3, 2014, the Commission approved the Seventh Amendment to the Plan. See Securities Exchange Act Release No. 71851, 79 FR 19687 (April 9, 2014). On February 19, 2015, the Commission approved the Eight Amendment to the Plan. See Securities Exchange Act Release No. 74323, 80 FR 10169 (February 25, 2015). On October 22, 2015, the Commission approved the Ninth Amendment to the Plan. See Securities Exchange Act Release No. 76244, 80 FR 66099 (October 28, 2015). On April 21, 2016, the Commission approved the Tenth Amendment to the Plan. See Securities Exchange Act Release No. 77679, 81 FR 24908 (April 27, 2016). On August 26, 2016, the Commission noticed for immediate effectiveness the Eleventh Amendment to the Plan. See Securities Exchange Act Release No. 78703, 81 FR 60397 (September 1, 2016). On January 19, 2017, the Commission approved the Twelfth Amendment to the Plan. See Securities Exchange Act Release No. 79845, 82 FR 8551

Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., the Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, NASDAQ BX, Inc.,² NASDAQ PHLX LLC,³ The NASDAQ Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., NYSE MKT LLC, and NYSE National Inc.⁴ (collectively, the “Participants”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”)⁵ and Rule 608 thereunder,⁶ a proposal to amend the Plan (“Thirteenth Amendment”).⁷ The proposal reflects changes unanimously approved by the Participants. The Thirteenth Amendment proposes to extend the pilot period of the Plan for one year and to authorize the Processor to disseminate information provided by the Primary Listing Exchange in connection with a reopening after a Trading Pause,⁸ as discussed below. A copy of the Plan, as proposed to be amended is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested persons on the Thirteenth Amendment.⁹

(January 26, 2017).

² See note 7 infra.

³ See note 7 infra.

⁴ See note 7 infra.

⁵ 15 U.S.C 78k-1(a)(3).

⁶ 17 CFR 242.608.

⁷ See Letter from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Brent Fields, Secretary, Commission, dated February 10, 2017. (“Transmittal Letter”). In the Transmittal Letter, the Participants also propose to amend the Plan to reflect name changes of certain Participants. See Transmittal Letter, notes 1 and 2.

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

⁹ 17 CFR 242.608. The Commission notes that staff from the Division of Economic and Risk Analysis has published a paper related to several operational features of the Plan. See Claudia E. Moise and Paca Flaherty, Division of Economic and Risk Analysis, Commission, “Limit Up-Limit Down” Pilot Plan and Associated Events, March 2017,

II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the Thirteenth Amendment, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,¹⁰ prepared and submitted by the Participants to the Commission.¹¹

A. Statement of Purpose and Summary of the Plan Amendment

The Participants filed the Plan on April 5, 2011, to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act. The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would prevent trades in individual NMS Stocks from occurring outside of the specified price bands. These limit up-limit down requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.

As set forth in more detail in the Plan, all trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down requirements specified in the Plan. More specifically, the single plan processor responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act will be responsible for calculating and disseminating a lower price band and upper price band, as provided for in Section V of the Plan. Section VI of the

available at <https://www.sec.gov/dera/staff-papers/white-papers/dera-luld-white-paper.pdf>.

¹⁰ See 17 CFR 242.608(a)(4) and (a)(5).

¹¹ See Transmittal Letter, supra note 7.

Plan sets forth the limit up-limit down requirements of the Plan, and in particular, that all trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the lower price band or above the upper price band for an NMS Stock, consistent with the Plan.

The Plan was initially approved for a one-year pilot period, which began on April 8, 2013.¹² Accordingly, the pilot period was scheduled to end on April 8, 2014. 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,¹³ the Participants modified the implementation schedule of Phase II of the Plan to extend the time period as to when the Plan would fully apply to all NMS Stocks. Accordingly, the Plan was not implemented across all NMS Stocks until December 8, 2013. Pursuant to the sixth amendment to the Plan,¹⁴ which further modified the implementation schedule of Phase II of the Plan, the date for full implementation of the Plan was moved to February 24, 2014. Pursuant to the seventh, ninth, and tenth amendments to the Plan,¹⁵ the pilot period was extended from April 8, 2014 to February 20, 2015, from February 20, 2015 to April 22, 2016, and April 22, 2016 to April 17, 2017.

The Participants propose to amend Section VIII(C) of the Plan to extend the pilot period through April 16, 2018, to allow the Participants time to implement and assess the changes to the

¹² See Section VIII of the Plan.

¹³ See supra note 1.

¹⁴ See id.

¹⁵ See id.

Plan as described in both the tenth amendment to the Plan,¹⁶ which was implemented on July 18, 2016, and the twelfth amendment to the Plan,¹⁷ which is scheduled for implementation in the third quarter of 2017. In the twelfth amendment, the Participants amended the Plan to provide that a Trading Pause will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures and reports a Reopening Price. The Plan was further amended to eliminate the current allowance for a trading center to resume trading in an NMS Stock following a Trading Pause if the Primary Listing Exchange has not reported a Reopening Price within ten minutes after the declaration of a Trading Pause and has not declared a Regulatory Halt. In addition, to preclude potential scenarios when trading may resume without Price Bands, the Plan was amended to provide that a trading center may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock. To address potential scenarios in which there is no Reopening Price from the Primary Listing Exchange to use to calculate Price Bands, the Plan was amended to address when trading may resume if the Primary Listing Exchange is unable to reopen due to a systems or technology issue and how the Reference Price would be determined in such a scenario or if the Primary Listing Exchange reopens trading on a zero bid or zero offer, or both.

In conjunction with amending the Plan, the Primary Listing Exchanges filed proposed rule changes with the Commission under Section 19(b) of the Exchange Act to amend their rules for automated reopenings following a Trading Pause consistent with a standardized approach agreed to by Participants that would allow for extensions of a Trading Pause if equilibrium cannot be met for

¹⁶ See id.

¹⁷ See id.

a Reopening Price within specified parameters.¹⁸ The Primary Listing Exchanges anticipate implementing the changes to their automated reopenings in the third quarter of 2017.

Because the planned implementation date for both the twelfth amendment to the Plan and the Primary Listing Exchange's amended reopening procedures are scheduled for a time after the current pilot end date, the Participants propose to extend the current Pilot an additional year to April 16, 2018. The Participants believe that this additional time will be beneficial in that it allows "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."¹⁹ The Participants further believe that extending the Pilot another year would provide additional time for the Participants, the Commission, and the public to consider other potential modifications to the Plan that are currently under consideration. These include consideration of changes to how NMS Stocks are tiered under the Plan, and the applicable percentage parameters associated with such tiers, consideration of the elimination of double-wide Price Bands at the open and close of trading, and consideration of recommendations made by the Equity Market Structure Advisory Committee with respect to Plan operations.²⁰ The Participants believe that the Plan should continue to operate as a Pilot uninterrupted to provide time to consider whether to make any such further modifications to the Plan.

¹⁸ See Securities Exchange Act Release Nos. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017) (SR-NYSEArca-2016-130) (Approval Order); 79884 (January 26, 2017), 82 FR 8968 (February 1, 2017) (SR-BatsBZX-2016-61) (Approval Order); 79876 (January 25, 2017), 82 FR 8888 (January 31, 2017) (SR-Nasdaq-2016-131) (Approval Order).

¹⁹ See supra note 1, 77 FR 33498 at 33508.

²⁰ See U.S. Securities and Exchange Commission Equity Market Structure Advisory Committee, Recommendations for Rulemaking on Issues of Market Quality, dated November 29, 2016, available at <https://www.sec.gov/spotlight/emsac/emsac-recommendations-rulemaking-market-quality.pdf>.

The Participants also propose to amend Section VII(B)(1) of the Plan to specify that the Processor would publish the following information that the Primary Listing Exchange would provide to the Processor in connection with reopening an NMS Stock after a Trading Pause: auction reference price; auction collars; and number of extensions to the reopening auction. The Participants believe that the proposed amendment is consistent with the goal of the twelfth amendment to the Plan, which is to reduce the potential for sequential Trading Pauses in an NMS Stock by centralizing the reopening process through the Primary Listing Exchange. Because only one exchange would be facilitating the reopening of an NMS Stock, the Participants believe that having the Processors disseminate the additional enumerated information that a Primary Listing Exchange would provide to the Processor regarding such reopening would promote transparency regarding the reopening of an NMS Stock following a Trading Pause. Specifically, the Participants believe that the information that the Processor would publish, as described above, is related to Plan operations in that such information would provide greater transparency regarding whether an NMS Stock would reopen at the end of the scheduled Trading Pause, or if such Trading Pause has been extended beyond the five-minute period contemplated in the Plan. The proposed amendment would therefore protect investors and the public interest and is appropriate to the maintenance of fair and orderly markets.²¹

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan.

²¹ In the context of other national market system plans under Rule 608 of Regulation NMS, the Participants are considering whether the SIPs should disseminate additional information regarding auctions, such as imbalance information and indicative match price.

C. Implementation of Plan

The initial date of the Plan operations was April 8, 2013.

D. Development and Implementation Phases

The Plan was initially implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation began on April 8, 2013 and was completed on May 3, 2013. Implementation of Phase II of the Plan began on August 5, 2013 and was completed on February 24, 2014. The tenth amendment to the Plan was implemented on July 18, 2016 and the twelfth amendment to the Plan must be implemented no later than July 19, 2017.²² Pursuant to this proposed amendment, the Participants propose to extend the pilot period until April 16, 2018.

E. Analysis of Impact on Competition

The proposed Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan's Participants has executed a written amended Plan.

H. Terms and Conditions of Access

²² See supra note 1, 82 FR 8551 at 8553 n.22.

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Section III(C) of the Plan provides that each Participant shall designate an individual to represent the Participant as a member of an Operating Committee. No later than the initial date of the Plan, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.

On February 8, 2017, the Operating Committee, duly constituted and chaired by Mr. Robert Books of Bats, met and voted unanimously to amend the Plan as set forth herein in accordance with Section III(C) of the Plan. The Plan Advisory Committee was notified in connection with the Thirteenth Amendment and was in favor.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Exchange Act and the rules thereunder. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-631 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-631. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the Participants' offices. All comments received will be

posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-631 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-05226 Filed: 3/15/2017 8:45 am; Publication Date: 3/16/2017]