

of other investment companies for short-term cash management purposes.

16. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

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

Kevin M. O'Neill,  
Deputy Secretary.

[FR Doc. 2013-24024 Filed 10-1-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70530; File No. 4-631]

**Joint Industry Plan; Order Approving the Fifth 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.**

September 26, 2013.

### 1. Introduction

On July 18, 2013, 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")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> a proposal to amend the Plan to Address Extraordinary Market Volatility ("Plan").<sup>3</sup> The proposal represents the fifth amendment to the Plan ("Fifth Amendment"), and reflects changes unanimously approved by the Participants. The Fifth Amendment to the Plan: (i) Provides that, if a Trading Pause is triggered in the last ten minutes of trading before the end of Regular Trading Hours, then the NMS Stock shall not reopen for continuous trading and shall close pursuant to established closing procedures of the Primary Listing Exchange; and (ii) revises the definition of which Exchange Traded Products ("ETPs") are eligible to be included in the list of Tier 1 NMS Stocks under the Plan. The Fifth Amendment was published for comment in the **Federal Register** on September 3, 2013.<sup>4</sup> The Commission received no comments letter in response to the Notice. This order approves the Fifth 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> The price bands would be calculated by the Securities Information Processors ("SIPs" or "Processors") responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.<sup>8</sup> Those price bands would be based on a Reference Price<sup>9</sup> 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 Parameter<sup>10</sup> 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 Pro-Forma Reference Price would become the Reference Price, and the Processors would disseminate new price bands based on

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

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

<sup>9</sup> See Section I(T) of the Plan.

<sup>10</sup> 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.

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> See Letter from Janet M. McGinness, Executive Vice President & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated July 18, 2013 ("Transmittal Letter").

<sup>4</sup> See Securities Exchange Act Release No. 70274 (August 27, 2013), 78 FR 54305 ("Notice").

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

<sup>6</sup> See Section V of the Plan.

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 Bid<sup>11</sup> or National Best Offer<sup>12</sup> 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,<sup>13</sup> 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.<sup>14</sup> 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.

These limit up-limit down requirements would be coupled with Trading Pauses<sup>15</sup> 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 centers<sup>16</sup> 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,<sup>17</sup> thereby protecting investors and promoting a fair and orderly market.<sup>18</sup> 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.<sup>19</sup> The initial date of Plan operations was April 8, 2013.<sup>20</sup>

#### *B. Fifth Amendment to the Plan*

The Fifth Amendment proposes two changes to the Plan. First, the Participants propose to amend Section VII(C)(1) of the Plan to provide that if a Trading Pause is declared for an NMS Stock in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen for trading and shall attempt to execute a closing transaction using its established closing procedures. Second, the Participants propose to amend Section I of Appendix A of the Plan to revise the definition of which ETPs are eligible to be included in the list of Tier 1 NMS Stocks under the Plan. The Commission received no

comment letters in response to the Notice.<sup>21</sup>

### **III. Discussion and Commission Findings**

After careful review, the Commission finds that the Fifth Amendment is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>22</sup> Specifically, the Commission finds that the Fifth Amendment is consistent with Section 11A of the Act<sup>23</sup> and Rule 608 thereunder<sup>24</sup> in that it is appropriate in the public interest, for the protection of investors 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 VII(C)(1) of the Plan to provide that if a Trading Pause is declared for an NMS Stock in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen for trading and shall attempt to execute a closing transaction using its established closing procedures.<sup>25</sup> The Participants believe that reopening trading in a security within five minutes of the closing transaction could introduce additional volatility into trading for that particular symbol. The Participants stated that it would be more prudent to use the time during the Trading Pause and the period preceding the end of Regular Trading Hours for interest to be entered for the closing auction, rather than to hold a reopening auction that would be followed shortly by a closing auction. According to the Participants, holding two auctions so near in time may introduce additional uncertainty into the market as market participants may not want to enter interest for a

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

<sup>12</sup> *Id.*

<sup>13</sup> 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.

<sup>14</sup> See Section I(D) of the Plan.

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> 17 CFR 242.600(b)(47).

<sup>18</sup> See Transmittal Letter, *supra* note 3.

<sup>19</sup> 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).

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

<sup>21</sup> The Participants noted that they developed the proposal to amend Section VII(C)(1) of the Plan based on feedback from SIFMA and other market participants. The Participants also noted that SIFMA raised issues concerning how the Plan operates at the close in its comment letter on the initial filing of the Plan. See Letter from Ann L. Vlcek, Managing Director and Associate General Counsel, SIFMA, to Elizabeth M. Murphy, Secretary, Commission dated June 22, 2011.

<sup>22</sup> In approving the Fifth Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78k-1.

<sup>24</sup> 17 CFR 242.608.

<sup>25</sup> Section VII(C) of the Plan currently addresses only the situation of when a Trading Pause is declared less than five minutes before the end of Regular Trading Hours. In such case, because a Trading Pause is a minimum of five minutes and trading would not reopen, the Plan contemplates that the Primary Listing Exchange shall attempt a closing transaction using its established closing procedures.

reopening auction if the security is going to close shortly thereafter. This may cause price dislocations, uncertainty of executions, and added confusion during an already volatile period.<sup>26</sup> Based on the Participants' statements, the Commission believes the proposal to amend Section VII(C)(1) of the Plan is consistent with with Section 11A of the Act.

Second, the Participants propose to amend Section I of Appendix A of the Plan to revise the definition of which ETPs are eligible to be included in the list of Tier 1 NMS Stocks under the Plan by deleting the following language: "To ensure that ETPs that track similar benchmarks but that do not meet this volume criterion do not become subject to pricing volatility when a component security is the subject of a Trading Pause, non-leveraged ETPs that have traded below this volume criterion, but that track the same benchmark as an ETP that does meet the volume criterion, will be deemed eligible to be included as a Tier 1 NMS Stock." The Participants note that based on experience thus far with the Plan, certain thinly traded ETPs with wide quotes that are included as Tier 1 NMS Stocks because they track an index of an ETP that meets the volume criterion are triggering Trading Pauses.<sup>27</sup> These Trading Pauses are triggered because of bids or offers that cross the Price Band rather than because of an execution of a trade in the underlying security. This results in certain ETPs that have not traded during the day triggering Trading Pauses and requiring a reopening auction process, despite the lack of trading in that security.<sup>28</sup> The amendment to Section I of Appendix A will reduce the potential for certain thinly-traded NMS Stock in Tier 1 that have not experienced any trading volatility to be halted and then have to go through a reopening auction process. Based on the Participants' statements, the Commission believes that the proposal to amend 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 during that time with respect to such issues, and will propose any modifications to the Plan that may be necessary or appropriate.<sup>29</sup> Similarly, the Commission expects that the Participants will propose any modifications to the Plan that may be necessary or appropriate in response to the data being gathered by the Participants during the pilot period, including any proposed changes to thinly-traded NMS Stocks in Tier 2 that have not experienced any trading volatility.

Therefore, the Commission finds that the Fifth Amendment to the Plan is consistent with Section 11A of the Act<sup>30</sup> and Rule 608 thereunder.<sup>31</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 11A of the Act<sup>32</sup> and Rule 608 thereunder,<sup>33</sup> that the Fifth 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.<sup>34</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-24019 Filed 10-1-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70520; File No. SR-NYSEARCA-2013-94]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services Regarding Calculation of the Mid-Point Passive Liquidity Order Tier

September 26, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on

September 17, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Fee Schedule") regarding calculation of the Mid-Point Passive Liquidity ("MPL") Order Tier. The Exchange proposes to implement the fee change on October 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule regarding calculation of the MPL Order Tier.<sup>4</sup> The Exchange proposes to implement the fee change on October 1, 2013.

Under the MPL Order Tier, MPL Orders that provide liquidity to the Exchange receive a credit of \$0.0020 per share for Tape A, B and C Securities. As specified in the Fee Schedule, the MPL

<sup>26</sup> The Participants noted that Primary Listing Exchanges will be filing proposed rule changes with the Commission to update their respective closing procedures to address the ability to permit additional interest to be entered for the purpose of a closing auction if there is a Trading Pause declared near the end of Regular Trading Hours. See Notice, *supra* note 4.

<sup>27</sup> The Participants noted that since the initial date of Plan operations through to July 8, 2013, there have been 32 Trading Pauses in NYSE Arca-listed securities triggered pursuant to the Plan. These Trading Pauses have been in only ten NMS Stocks, some more than once a day, and all are ETPs with less than \$2,000,000 notional ADV. The symbols are BXDB, BDG, GIY, VIOO, BOS, SAGG, IELG, IESM, HUSE, and GMTB. See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

<sup>30</sup> 15 U.S.C. 78k-1.

<sup>31</sup> 17 CFR 242.608.

<sup>32</sup> 15 U.S.C. 78k-1.

<sup>33</sup> 17 CFR 242.608.

<sup>34</sup> 17 CFR 200.30-3(a)(29).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 69926 (July 3, 2013), 78 FR 41154 (July 9, 2013) (SR-NYSEARCA-2013-67). A Passive Liquidity ("PL") Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. See Rule 7.31(h)(4). An MPL Order is a PL Order executable only at the midpoint of the Protected Best Bid and Offer. See Rule 7.31(h)(5).