

4. The Manager will not make on behalf of a Fund any investment in which a Co-Investor (as defined below) has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment: (a) Gives the Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a pro rata basis with the Co-Investor. The term "Co-Investor" with respect to any Fund means any person who is: (a) An "affiliated person" (as defined in section 2(a)(3) of the Act) of the Fund; (b) a Winstead Entity; (c) an Equity Shareholder or other employee of a Winstead Entity; (d) an investment vehicle offered, sponsored, or managed by the Firm or an affiliated person of the Firm; or (e) an entity in which a Winstead Entity acts as a general partner, or has a similar capacity to control the sale or disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; or (c) when the investment is comprised of securities that are (i) listed on any exchange registered under section 6 of the Exchange Act; (ii) NMS stocks pursuant to section 11A(a)(2) of the Exchange Act and rule 600(a) of Regulation NMS thereunder; (iii) government securities as defined in section 2(a)(16) of the Act or other securities that meet the definition of "Eligible Security" in rule 2a-7 under the Act; or (iv) listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

5. The Manager of each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements of the Fund. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all of the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the Manager of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund and the Manager will maintain and preserve, for the life of each Fund and at least six years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Fund to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

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

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68787; File No. SR-NYSEMKT-2013-08]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Delaying the Operative Date of a Rule Change to Exchange Rule 80B—Equities, Which Provides for Methodology for Determining When To Halt Trading in All Stocks Due to Extraordinary Market Volatility, From the Date of February 4, 2013, Until April 8, 2013

January 31, 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 January 23, 2013, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 delay the operative date of a rule change to Exchange Rule 80B—Equities, which provides for methodology for determining when to halt trading in all stocks due to extraordinary market volatility, from the date of February 4, 2013, until April 8, 2013. The text of the proposed rule change [sic] 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rule 80B—Equities, which provides the methodology for determining when to halt trading in all stocks due to extraordinary market volatility, to delay the operative date of the pilot by which such Rule operates from the current scheduled date of February 4, 2013, until April 8, 2013, to coincide with the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility ("LULD

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

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

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

Plan”).<sup>4</sup> As proposed, the pilot period will begin and end at the same time [sic] the pilot period for the LULD Plan. The current Rule 80B—Equities would remain in effect until April 8, 2013. If the pilot is not either extended or approved permanently at the end of the pilot period, the current version of Rule 80B—Equities would be in effect.

#### *Current Rule 80B—Equities*

In its current form,<sup>5</sup> the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels’ trigger points. The Exchange disseminates the new trigger levels quarterly to the media and via an Information Memo and [sic] is available on the Exchange’s Web site.<sup>6</sup> The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a Rule 80B—Equities circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

#### *Level 1 Halt*

Anytime before 2:00 p.m.—one hour;  
At or after 2:00 p.m. but before 2:30 p.m.—30 minutes;  
At or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

#### *Level 2 Halt*

Anytime before 1:00 p.m.—two hours;  
At or after 1:00 p.m. but before 2:00 p.m.—one hour;  
At or after 2:00 p.m.—trading shall halt and not resume for the rest of the day.

#### *Level 3 Halt*

At any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a Rule 80B—Equities trading halt for stocks that comprise the DJIA.

#### *Amended Rule 80B—Equities*

The Exchange amended Rule 80B—Equities to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility (“market-wide circuit breakers”).<sup>7</sup> The Exchange, other equities, options, and futures markets, and FINRA amended the market-wide circuit breakers to take into consideration the recommendations of the Joint CFTC—SEC Advisory Committee on Emerging Regulatory Issues, and to provide for more meaningful measures in today’s markets of when to halt trading in all stocks. Accordingly, the Exchange amended Rule 80B—Equities as follows: (i) Replaced the DJIA with the S&P 500; (ii) replaced the quarterly calendar recalculation of Rule 80B—Equities triggers with daily recalculations; (iii) replaced the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modified the length of the trading halts associated with each market decline level; and (v) modified the times when a trading halt may be triggered. The Exchange believes that these amendments update the rule to reflect today’s high-speed, highly electronic trading market while still meeting the original purpose of Rule 80B—Equities: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

The Exchange adopted the proposed changes to the market-wide circuit breakers on a pilot basis for a period that corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together.<sup>8</sup> In addition, in order for the markets and the single plan processors responsible for the consolidation of information pursuant to Rule 603(b) of

Regulation NMS under the Securities Exchange Act of 1934 to make the necessary technological changes to implement both the changes to the market-wide circuit breakers and the proposed LULD Plan, the Exchange established that the implementation date for the proposed rule changes should be the same date that the LULD Plan is implemented. The Exchange anticipates that the initial date of LULD Plan operations will be changed to April 8, 2013. For the same reasons as stated above, the Exchange proposes to delay the operative date of the market-wide circuit breaker pilot to April 8, 2013 in order for the implementation date for the market-wide circuit breaker pilot to remain the same date as for the LULD Plan.

#### *2. Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Additionally, delaying the operative date of the market-wide circuit breakers pilot until the initial date of operations of the LULD Plan would allow the pilot to begin and end at the same time of the LULD Plan so that the Exchange and the Commission could further assess the impact of the two pilots on the marketplace or whether other initiatives should be adopted in lieu of the pilots, which contributes to the protection of investors and the public interest.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to delay the operation of the market-wide

<sup>4</sup> The Commission approved the proposed changes to the market-wide circuit breakers on a pilot basis for a period scheduled to start on February 4, 2013 that corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together. See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR—NYSEAmex-2011-73). The Exchange anticipates that the initial date of LULD Plan operations will be changed to April 8, 2013. The proposal would delay the operative date of the market-wide circuit breaker pilot to April 8, 2013 in order for the implementation date for the market-wide circuit breaker pilot to remain the same date as for the LULD Plan.

<sup>5</sup> The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. See Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR—NYSE-98-06, SR—Amex-98-09, SR—BSE-98-06, SR—CHX-98-08, SR—NASD-98-27, and SR—Phlx-98-15).

<sup>6</sup> See e.g., NYSE Regulation Information Memos 11-19 (June 30, 2011) and 11-10 (March 31, 2011).

<sup>7</sup> See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR—NYSEAmex-2011-73).

<sup>8</sup> See *id.*

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

circuit breakers pilot until April 8, 2013 to allow the pilot period to begin and end at the same time as the LULD Plan, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same methodology for determining when to halt trading in all stocks due to extraordinary market volatility and the same requirements specified in the LULD Plan. Thus, the proposed changes will not impose any burden on competition while providing that the market-wide circuit breakers pilot period corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing

so will delay the operative date of the market-wide circuit breakers pilot until the initial date of operations of the LULD Plan, thereby allowing the pilot to run simultaneously with the LULD Plan, providing an opportunity to properly assess the impact of the two pilots on the marketplace and evaluate the pilots' effectiveness. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2013-08. This file number should be included on the subject line if email 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 Web site 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 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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 SR-NYSEMKT-2013-08 and should be submitted on or before February 27, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

[FR Doc. 2013-02629 Filed 2-5-13; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68791; File No. SR-BATS-2013-007]

**Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rules Related to Price Sliding Functionality**

January 31, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 25, 2013, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.