

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74110; File No. 4-631)

January 21, 2015

Joint Industry Plan; Notice of Filing of the Eighth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., 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.

I. Introduction

On December 24, 2014, Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of 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., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively with FINRA, 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 eighth amendment to the Plan (“Eighth Amendment”), and reflects changes unanimously approved by the Participants. The Eighth Amendment to the Plan proposes to: (i) establish a requirement for the Participants to submit a supplemental joint assessment to the Commission by May 29, 2015; and (ii) extend the end date of the pilot period

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ See Letter from Christopher B. Stone, Vice President, FINRA, to Brent Fields, Secretary, Commission, dated December 24, 2014 (“Transmittal Letter”).

of the Plan from February 20, 2015 to October 23, 2015. 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 Eighth Amendment to the Plan.⁴

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 are designed to prevent trades in individual NMS Stocks from occurring outside of the specified price bands.⁶ 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 (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands consist of a Lower Price Band and an Upper Price Band for each NMS Stock.⁷ The price bands are calculated by the Securities

⁴ “Any two or more self-regulatory organizations, acting jointly, . . . may propose an amendment to an effective national market system plan [] by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment...” 17 CFR 242.608(a)(1) The Commission is required to publish notice of the filing of any proposed amendment to any effective national market system plan, together with the terms of substance of the filing or a description of the subjects and issues involved, and shall provide interested persons an opportunity to submit written comments. See 17 CFR 242.608(b)(1). No amendment to a national market system plan shall become effective unless approved by the Commission or otherwise permitted in accordance with Rule 608(b)(3). See id.

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. See Exhibit A, infra.

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.⁸ Those price bands are 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 are 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 are calculated by applying double the Percentage Parameters as set forth in Appendix A of the Plan.

The Processors 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 does not move by one percent or more from the Reference Price in effect, no new price bands are disseminated, and the current Reference Price remains the effective Reference Price. If the Pro-Forma

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.

Reference Price moves by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price becomes the Reference Price, and the Processors disseminate new price bands based on the new Reference Price. Each new Reference Price remains 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 are 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 enters a Limit State,¹³ and the Processors are 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 immediately enters 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 exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations are executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange declares a five-minute Trading Pause, which is applicable to all markets trading the security.

These limit up-limit down requirements are coupled with Trading Pauses¹⁵ to accommodate more fundamental price moves (as opposed to erroneous trades or momentary

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.

¹⁵ The primary listing market declares a Trading Pause in an NMS Stock; upon notification by the primary listing market, the Processor disseminates this information to the public.

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, are 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 are 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 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 are 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 thereby protecting investors and promoting a fair and orderly market.¹⁸ In particular, the Plan is

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).

¹⁸ See Transmittal Letter, supra note 3.

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

The following summarizes the Eighth Amendment to the Plan and the rationale behind those changes:

Proposed Amendment

The Eighth Amendment proposes two changes to the Plan. First, the Participants propose to amend Appendix B of the Plan to state that, by May 29, 2015, the Participants shall provide to the Commission a supplemental joint assessment relating to the impact of the Plan. On September 29, 2014, the Participants submitted a Participant Impact Assessment,²¹ which provided the Commission with the Participants' initial observations in each area required to be addressed under Appendix B to the Plan. Though the Participants have submitted the Participant Impact Assessment, they believe that a supplemental joint assessment is appropriate. The supplemental joint assessment would evaluate the impact of the Plan using the measures set forth in Appendix B, but would be an extensive assessment based upon a data-driven analysis across trading centers using methodology agreed upon by the Participants, which would allow the Participants to make unified recommendations, where appropriate, that would be of greater value to the Commission and the public than separate submissions. The Participants also state that they intend to make the supplemental joint assessment publicly available.

¹⁹ The limit up-limit down mechanism set forth in the Plan replaces 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 See Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 29, 2014 ("Participant Impact Assessment").

The Participants intend to engage a third-party consultant to assist in conducting the cross-market analysis and preparing the supplemental joint assessment. The Participants believe that the process of selecting, engaging, meeting with, and providing required data to the ultimate third-party consultant will be time consuming, but beneficial in that it would facilitate the development of a joint assessment that, unlike individual Participant submissions, would not need to be compared and reconciled.

Second, the Participants propose to amend Section VIII.C the Plan to extend the pilot period of the Plan from February 20, 2015 through October 23, 2015. The Participants believe that extension of the pilot period is necessary and appropriate in the interest of the public, including because additional time will: (i) provide a reasonable period of time for the public to comment on the supplemental joint assessment and recommendations; (ii) provide Participants time to use the information collected during the operation of the Plan to perform further analysis and recommend amendments to the Plan; and (iii) allow the Commission adequate time to review the supplemental joint assessment and recommendations provided by the Participants, and determine if any modifications to the Plan are appropriate. The Participants also believe 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.”²² Finally, the Participants believe that the proposed amendment, which provides for additional time to observe the operation of the Pilot, as well as to prepare and submit a supplemental joint assessment, will facilitate the development of better

²² See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 at 33508 (June 6, 2012).

recommendations and will allow the Participants to make unified recommendations, where appropriate, regarding the operation of the Plan.

The Participants note that the amended version of the Plan also includes the revised Appendix A – Schedule 1, which was updated for trading beginning July 1, 2014. As set forth in Appendix A – Percentage Parameters, the Primary Listing Exchange updates Schedule 1 to Appendix A semi-annually based on the fiscal year and such updates do not require a Plan amendment.

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.

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. Pursuant to this proposed amendment, the Participants propose to extend the pilot period so that it is set to end October 23, 2015.

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 the 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

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 for each Participant to 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 September 18, 2014, the Operating Committee, duly constituted and chaired by Mr. Christopher B. Stone of FINRA, met and voted to amend the Plan as set forth herein in accordance with Section III(C) of the Plan.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Eighth Amendment 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 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 Plan that are filed with the Commission, and all written communications relating to the Plan 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 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the Participants' principal 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.

Brent J. Fields
Secretary