

NYSEAmex-2011-40 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Cathy H. Ahn,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64735; File Nos. SR-BATS-2011-016; SR-BYX-2011-011; SR-BX-2011-025; SR-CBOE-2011-049; SR-CHX-2011-09; SR-EDGA-2011-15; SR-EDGX-2011-14; SR-FINRA-2011-023; SR-ISE-2011-028; SR-NASDAQ-2011-067; SR-NYSE-2011-21; SR-NYSEAmex-2011-32; SR-NYSEArca-2011-26; SR-NSX-2011-06; SR-Phlx-2011-64]

**Self-Regulatory Organizations; BATS Exchange, Inc.; BATS Y-Exchange, Inc.; NASDAQ OMX BX, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; The NASDAQ Stock Market LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; National Stock Exchange, Inc.; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Changes Relating To Expanding the Pilot Rule for Trading Pauses Due to Extraordinary Market Volatility to All NMS Stocks**

June 23, 2011.

### I. Introduction

On May 4, 2011 and May 5, 2011, each of BATS Exchange, Inc. (“BATS”), BATS Y-Exchange, Inc. (“BYX”), NASDAQ OMX BX, Inc. (“BX”), Chicago Board Options Exchange, Incorporated (“CBOE”), Chicago Stock Exchange, Inc. (“CHX”), EDGA Exchange, Inc. (“EDGA”), EDGX Exchange, Inc. (“EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), International Securities Exchange LLC (“ISE”), The NASDAQ Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE Amex LLC (“NYSE Amex”), NYSE Arca, Inc. (“NYSE Arca”), National Stock Exchange, Inc. (“NSX”), and NASDAQ OMX PHLX LLC (“Phlx”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities

Exchange Act of 1934 (“Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes to amend certain of their respective rules to expand the trading pause pilot in individual stocks to include all remaining NMS stocks, but to require wider percentage price moves before a trading pause is triggered for the newly added securities.<sup>4</sup> The current trading pause pilot applies only to securities that are included in the S&P 500® Index (“S&P 500”), the Russell 1000® Index (“Russell 1000”) or a select group of Exchange Traded Products (“ETPs”).<sup>5</sup> The proposed rule changes were published for comment in the *Federal Register* on May 12, 2011.<sup>6</sup> The Commission received no comments on the proposed rule changes. On June 20, 2011 and June 21, 2011, the Exchanges and FINRA filed amendments to their respective proposed rule changes.<sup>7</sup> This order

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

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

<sup>4</sup> The term “Exchanges” shall refer collectively to all of the national securities exchanges in this order.

NMS stock means any NMS security other than an option. See 17 CFR 242.600(47). NMS security means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. See 17 CFR 242.600(46).

<sup>5</sup> On May 6, 2011, Phlx filed an amendment to its proposed rule change. See Amendment No. 1 to SR-Phlx-2011-64 (noting that the proposed rule change was approved by the Board of Directors of Phlx on May 6, 2011). Amendment No. 1 to SR-Phlx-2011-64 is a technical amendment and is not subject to notice and comment.

<sup>6</sup> See Securities Exchange Act Release Nos. 64435 (May 6, 2011), 76 FR 27684 (May 12, 2011); 64433 (May 6, 2011), 76 FR 27680 (May 12, 2011); 64427 (May 6, 2011), 76 FR 27704 (May 12, 2011); 64434 (May 6, 2011), 76 FR 27687 (May 12, 2011); 64431 (May 6, 2011), 76 FR 27683 (May 12, 2011); 64432 (May 6, 2011), 76 FR 27701 (May 12, 2011); 64428 (May 6, 2011), 76 FR 27702 (May 12, 2011); 64424 (May 6, 2011), 76 FR 27707 (May 12, 2011); 64423 (May 6, 2011), 76 FR 27677 (May 12, 2011); 64426 (May 6, 2011), 76 FR 27678 (May 12, 2011); 64420 (May 6, 2011), 76 FR 27675 (May 12, 2011); 64421 (May 6, 2011), 76 FR 27708 (May 12, 2011); 64422 (May 6, 2011), 76 FR 27691 (May 12, 2011); 64425 (May 6, 2011), 76 FR 27689 (May 12, 2011); 64419 (May 6, 2011), 76 FR 27678 (May 12, 2011).

<sup>7</sup> See Amendment No. 1 to SR-BATS-2011-016; SR-BYX-2011-011; SR-BX-2011-025; SR-CBOE-2011-049; SR-CHX-2011-09; SR-EDGA-2011-15; SR-EDGX-2011-14; SR-FINRA-2011-023; SR-ISE-2011-028; SR-NASDAQ-2011-067; SR-NYSE-2011-21; SR-NYSEAmex-2011-32; SR-NYSEArca-2011-26; and SR-NSX-2011-06 and Amendment No. 2 to SR-Phlx-2011-64 (collectively, the “Implementation Date Amendments”). The Implementation Date Amendments propose an implementation date of August 8, 2011 for the proposed rule changes. In addition, Amendment No. 1 to the Nasdaq filing corrects a typographical error in a cross-reference in the proposed rule text. The Implementation Date Amendments are technical amendments and are not subject to notice and comment.

approves the proposed rule changes, as amended.

### II. Description of the Proposals

On May 6, 2010, the U.S. equity markets experienced a severe disruption.<sup>8</sup> Among other things, the prices of a large number of individual securities suddenly declined by significant amounts in a very short time period, before suddenly reversing to prices consistent with their pre-decline levels. This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices and were broken by the Exchanges and FINRA. The Commission is concerned that events such as those that occurred on May 6 can seriously undermine the integrity of the U.S. securities markets. Accordingly, it has worked over the past year to identify and assess the causes and contributing factors of the May 6 market disruption<sup>9</sup> and to fashion policy responses that will help prevent a recurrence.<sup>10</sup>

<sup>8</sup> The events of May 6 are described more fully in the report of the staffs of the Commodity Futures Trading Commission (“CFTC”) and the Commission, *See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues*, “Findings Regarding the Market Events of May 6, 2010,” dated September 30, 2010.

<sup>9</sup> *Id.*

<sup>10</sup> In addition to the trading pause pilot for individual securities, thirteen of the Exchanges and FINRA filed a proposed NMS Plan to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS stocks. *See Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4-631) (Notice of Filing of a 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 Amex LLC, and NYSE Arca, Inc.) (“Proposed Limit Up-Limit Down NMS Plan”).* As discussed further below, the trading pause pilot would terminate on the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies. The Commission also approved proposed rule changes that set forth clearer standards and reduced the discretion of self-regulatory organizations with respect to breaking erroneous trades. *See e.g., Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).* Further, the Commission approved proposed rule changes that enhanced the minimum quoting standards for equity market makers to require that they post continuous two-sided quotations within a designated percentage of the inside market to eliminate market maker “stub quotes” that are so far away from the prevailing market that they are not intended to be executed. *See Securities Exchange Act Release No. 63255 (November 5,*

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

On June 10, 2010, the Commission granted accelerated approval for proposed rule changes by the Exchanges and FINRA to pause trading during periods of extraordinary market volatility in S&P 500 stocks.<sup>11</sup> On September 10, 2010, the Commission approved the Exchanges' and FINRA's proposals to add securities included in the Russell 1000, as well as specified ETPs, to the pilot.<sup>12</sup>

The rules require the primary listing market for a security ("Listing Market") to issue a five-minute trading pause if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Market is required to notify the other Exchanges, FINRA and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the Consolidated Tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges and FINRA

2010), 75 FR 69484 (November 12, 2010). In addition, the Commission proposed the creation of a large trader reporting system that would enhance its ability to identify large market participants, collect information on their trades, and analyze their trading activity. See Securities Exchange Act Release No. 61908 (April 14, 2010, 75 FR 21456 (April 23, 2010)). The Commission also proposed a new rule that would require SROs to establish a consolidated audit trail system that would enable regulators to track information related to trading orders received and executed across the securities markets. See Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

<sup>11</sup> See Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR-BATS-2010-014; SR-EDGA-2010-01; SR-EDGX-2010-01; SR-BX-2010-037; SR-ISE-2010-48; SR-NYSE-2010-39; SR-NYSEAmex-2010-46; SR-NYSEArca-2010-41; SR-NASDAQ-2010-061; SR-CHX-2010-10; SR-NSX-2010-05; and SR-CBOE-2010-047); 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025).

<sup>12</sup> See *e.g.*, Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR-BATS-2010-018; SR-BX-2010-044; SR-CBOE-2010-065; SR-CHX-2010-14; SR-EDGA-2010-05; SR-EDGX-2010-05; SR-ISE-2010-66; SR-NASDAQ-2010-079; SR-NYSE-2010-49; SR-NYSEAmex-2010-63; SR-NYSEArca-2010-61; and SR-NSX-2010-08); and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033).

The Exchanges and FINRA submitted proposed rule changes shortly after the addition of the Russell 1000 securities and ETPs to extend the operation of the pilot, which was set to expire on December 10, 2010, until April 11, 2011. See *e.g.*, Securities Exchange Act Release No. 63497 (December 9, 2010), 75 FR 78315 (December 15, 2010). More recently, the Exchanges and FINRA submitted proposed rule changes to extend the operation of the pilot until the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies. See *e.g.*, Securities Exchange Act Release No. 64207 (April 6, 2011), 76 FR 20424 (April 12, 2011). The Commission understands that the Exchanges and FINRA intend to propose a further extension of the pilot.

are required to pause trading in the security on their markets.

At the end of the five-minute pause, the Listing Market reopens trading in the security in accordance with its procedures for doing so. Trading resumes on other Exchanges and in the over-the-counter market once trading has resumed on the Listing Market. In the event of a significant imbalance on the Listing Market at the end of the trading pause, the Listing Market may delay reopening. If the Listing Market has not reopened within ten minutes from the initiation of the trading pause, however, the other Exchanges and FINRA may resume trading.<sup>13</sup>

Under the current proposal (the "Phase III Circuit Breaker Pilot"), the Exchanges and FINRA propose to include all remaining NMS stocks ("Phase III securities") in the existing pilot program shortly after the Commission approves the proposed rule changes.<sup>14</sup> The Exchanges and FINRA believe that adding these securities to the pilot would have the beneficial effect of applying the circuit breaker's protections against excessive volatility to a larger group of securities, while at the same time allowing the opportunity, during the pilot period, for continued review of the operation of the circuit breaker and an assessment of whether the parameters should be further expanded or modified.

In addition, the Exchanges and FINRA propose that, for Phase III securities, the price move required to trigger a trading pause shall be 30% or more for such securities priced at \$1 or higher, and 50% or more for such securities priced less than \$1.<sup>15</sup> The Exchanges and FINRA believe that these percentages are commensurate with the characteristics shared by the Phase III securities within the applicable range given that the proposed additional stocks are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchanges and FINRA believe that broader price move percentages would be appropriate for the Phase III securities, and would promote the objectives of the pilot by reducing the negative impact of unanticipated price movements in a security. The Exchanges and FINRA believe that applying a

<sup>13</sup> For more details on the operation of the Exchanges' and FINRA's rules, see *supra* notes 6 and 11.

<sup>14</sup> Specifically, the Exchanges and FINRA propose to implement the Phase III Circuit Breaker Pilot on August 8, 2011. See *supra* note 7.

<sup>15</sup> Under the proposed rule changes, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

broader percentage to securities priced less than \$1 compared to those priced above \$1 is appropriate given that lower-priced securities may tend to be more volatile, and price movements of lower-priced securities equate to a higher percentage move than a similar price change for a higher-priced security.

The Exchanges and FINRA also propose to adjust the market maker quoting requirements, as necessary, to assure they remain within a narrower range than the new thresholds. Currently, market makers may fulfill their quoting obligations by maintaining a quote 30% away from the National Best Bid and Offer ("NBBO") in a security that is not included in the S&P 500, Russell 1000, or in the list of ETPs. Accordingly, the Exchanges and FINRA<sup>16</sup> propose to revise this quoting obligation for Phase III securities trading at or above \$1 (for which the proposed trading pause trigger is 30%) to 28% away from the NBBO. The quoting obligation for Phase III securities trading below \$1 (which would be subject to the 50% threshold) would remain unchanged.

### III. Discussion and Commission Findings

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposals submitted by the Exchanges are consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires, among other things, that the rules of national securities exchanges be 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.<sup>18</sup>

Additionally, the Commission finds that the FINRA proposal is consistent with Section 15A(b)(6) of the Act,<sup>19</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and

<sup>16</sup> Only those SROs with market makers (*i.e.*, BATS, BYX, BX, CBOE, CHX, FINRA, Nasdaq, NSX, NYSE, NYSE Amex, and NYSE Arca) proposed this change to the market maker quoting requirements.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also believes that the proposals submitted by the Exchanges and FINRA are consistent with Section 11A(a)(1) of the Act<sup>20</sup> in that they seek to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule changes will expand the trading pause pilot to include all remaining NMS stocks, but will apply wider price move percentages to the newly added securities to reflect their general higher volatility, lower liquidity, and other trading characteristics. The Commission believes that the proposed trigger percentages of 30% and 50% are reasonable and appropriate for the purposes of the pilot. The Commission also believes that expanding the market-wide trading pauses to include all remaining NMS stocks will serve to reduce the risk of potentially destabilizing price volatility and thereby help promote the goals of investor protection and fair and orderly markets. Further, expanding the pilot will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

Finally, on April 5, 2011, thirteen of the Exchanges and FINRA filed a proposed NMS Plan to create a market-wide limit up-limit down mechanism to address extraordinary market volatility in NMS stocks. By its terms, the circuit breaker pilot will expire on the earlier of August 11, 2011, or the date on which this limit up-limit down mechanism, if approved by the Commission, applies.<sup>21</sup>

The Commission also believes that the proposed change to the market maker quoting obligations is consistent with the Act. This aspect of the proposal would adjust the market maker quoting obligations to assure they remain within a narrower range than the new trading pause percentage thresholds for Phase III securities, which is consistent with the original design of the market maker quoting obligations.

#### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule changes (SR-BATS-2011-016; SR-BYX-2011-011; SR-BX-2011-025; SR-CBOE-2011-049; SR-CHX-2011-09; SR-EDGA-2011-15; SR-EDGX-2011-14; SR-FINRA-2011-023; SR-ISE-2011-028; SR-NASDAQ-2011-

067; SR-NYSE-2011-21; SR-NYSEAmex-2011-32; SR-NYSEArca-2011-26; SR-NSX-2011-06; SR-Phlx-2011-64) be, and hereby are, approved, as amended.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64736; File No. SR-FINRA-2011-028]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook

June 23, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 10, 2011, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to adopt the consolidated FINRA supervision rules. Specifically, the proposed rule change would: (1) Adopt FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) to replace NASD Rules 3010 (Supervision) and 3012 (Supervisory Control System), respectively; (2) incorporate into FINRA Rule 3110 and its supplementary material the requirements of NASD IM-1000-4 (Branch Offices and Offices of Supervisory Jurisdiction), NASD IM-3010-1 (Standards for Reasonable Review), Incorporated NYSE Rule 401A (Customer Complaints), and Incorporated NYSE Rule 342.21 (Trade Review and Investigation); (3) replace

NASD Rule 3010(b)(2) (often referred to as the “Taping Rule”) with new FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms); (4) replace NASD Rule 3010(e) (Qualifications Investigated) with new FINRA Rule 1260 (Responsibility of Member to Investigate Applicants for Registration); (5) replace NASD Rule 3110(i) (Holding of Customer Mail) with new FINRA Rule 3150 (Holding of Customer Mail); and (6) delete the following NASD and Incorporated NYSE Rules and NYSE Rule Interpretations: (i) NASD Rule 3010(f) (Applicant’s Responsibility); (ii) NYSE Rule 342 (Offices—Approval, Supervision and Control) and related NYSE Rule Interpretations; (iii) NYSE Rule 343 (Offices—Sole Tenancy, and Hours) and related NYSE Rule Interpretations; (iv) NYSE Rule 351(e) (Reporting Requirements) and NYSE Rule Interpretation 351(e)/01 (Reports of Investigation); (v) NYSE Rule 354 (Reports to Control Persons); and (vi) NYSE Rule 401 (Business Conduct).

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and for Web site viewing and printing 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),<sup>3</sup>

<sup>3</sup> The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the

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<sup>20</sup> 15 U.S.C. 78k-1(a)(1).

<sup>21</sup> See *supra* notes 10 and 12.

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</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.