

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68779; File No. SR-NSX-2013-04]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Operative Date of Rule 11.20A Regarding Market-Wide Circuit Breakers Due to Extraordinary Market Volatility

January 31, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on January 25, 2013, National Stock Exchange, Inc. (the “Exchange” or “NSX”) 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 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 11.20A, 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 is available on the Exchange’s Web site at <http://www.nsx.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room [sic].

#### 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 Exchange 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. 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 Exchange Rule 11.20A, 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 Plan”).<sup>3</sup> As proposed, the pilot period will begin and end at the same time the pilot period for the LULD Plan. The current Exchange Rule 11.20A 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 Exchange Rule 11.20A would be in effect.

##### Current Exchange Rule 11.20A

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 [sic] 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 New York Stock Exchange, Inc. (“NYSE”) disseminates the new trigger levels quarterly to the media and via an Information Memo and [sic] is available on the NYSE’s Web site.<sup>4</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 an Exchange Rule 11.20A circuit breaker is in effect, trading in all stocks halt [sic] 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 11.20A trading halt for stocks that comprise the DJIA.

##### Amended Exchange Rule 11.20A

The Exchange amended Exchange Rule 11.20A to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility (“market-wide circuit breakers”).<sup>5</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 11.20A as follows: (i) Replaced the DJIA with the S&P 500; (ii) replaced the quarterly calendar recalculation of Exchange Rule 11.20A 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 Exchange Rule 11.20A: To ensure that market participants have an opportunity to

<sup>3</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-NSX-2011-11). 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>4</sup> See e.g., NYSE Regulation Information Memos 11-19 (June 30, 2011) and 11-10 (March 31, 2011).

<sup>5</sup> See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-NSX-2011-11).

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

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

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>6</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>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</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 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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

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 designates the proposal operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of the 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>12</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-NSX-2013-04 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-NSX-2013-04. 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

<sup>11</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>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> See *id.*

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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-NSX-2013-04 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>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68788, File No. SR-BATS-2012-046]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change To Modify BATS Rule 11.23 Relating to Auctions of Exchange-Listed Securities

January 31, 2013.

#### I. Introduction

On December 6, 2012, BATS Exchange, Inc. ("BATS" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its rules governing auctions conducted by the Exchange for securities listed on the Exchange. The proposed rule change was published for comment in the **Federal Register** on

December 20, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange has proposed to amend BATS Rule 11.23, which governs auctions conducted by the Exchange for securities listed on the Exchange.<sup>4</sup> These auctions include: (1) An opening auction ("Opening Auction"); (2) a closing auction ("Closing Auction"); (3) an auction in the event of an initial public offering ("IPO Auction"); and (4) an auction in the event of a halt of trading in a security ("Halt Auction") (collectively referred to as "Exchange Auctions").<sup>5</sup> In connection with the Exchange Auctions, BATS offers the BATS Auction Feed, which provides recipients with uncompressed real-time data regarding the current status of price and size information related to Exchange Auctions.<sup>6</sup>

##### A. Change to the Definition of Collar Price Range

The Exchange has proposed to amend BATS Rule 11.23(a)(6) to amend the definition of "Collar Price Range" to incorporate the Exchange's numerical guidelines for clearly erroneous executions under BATS Rule 11.17(c)(1).<sup>7</sup> Currently, BATS Rule 11.23(a)(6) sets the Collar Price Range at 10% of the Volume Based Tie Breaker<sup>8</sup> below and above the BATS Best Bid ("ZBB") and BATS Best Offer ("ZBO"),<sup>9</sup> the National Best Bid ("NBB") and National Best Offer ("NBO"), or the

<sup>3</sup> See Securities Exchange Act Release No. 68442 (December 14, 2012), 77 FR 75459 (December 20, 2012) ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 65619 (October 25, 2011), 76 FR 67238 (October 31, 2011) (order approving proposed rule change by BATS to adopt rules applicable to auctions conducted by the Exchange for exchange-listed securities).

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

<sup>7</sup> See Notice *supra* note 3, at 76 FR 75460.

<sup>8</sup> BATS Rule 11.23(a)(23) defines "Volume Based Tie Breaker" as the midpoint of the BATS Best Bid or BATS Best Offer ("ZBBO") for a particular security. In the event that there is either no ZBB or ZBO for the security, the National Best Bid and Offer ("NBBO") will be used if there is at least one limit order on either the Continuous Book or the Auction Book. In the event that there is no NBB or NBO for the security or no limit orders on the Continuous Book and the Auction Book, the price of the Final Last Sale Eligible Trade will be used. See *infra* note 10 (defining "Final Last Sale Eligible Trade"). BATS Rule 11.23(a)(1) defines the "Auction Book" as all Eligible Auction Orders on the BATS Book. BATS Rule 11.23(a)(7) defines "Continuous Book" as all orders on the BATS Book that are not Eligible Auction Orders.

<sup>9</sup> See BATS Rule 11.23(a)(24) (defining the ZBB and ZBO). BATS Rule 11.23(a)(24) defines the BATS Best Bid or BATS Best Offer as "ZBBO."

Final Last Sale Eligible Trade,<sup>10</sup> depending on market conditions at the time of the auction.<sup>11</sup> The Exchange has proposed to base its Collar Price Range on numerical guidelines for clearly erroneous rules under BATS Rule 11.17(c)(1), which would be determined as follows: where the Collar Midpoint is \$25.00 or less, the Collar Price Range shall be the range from 10% below the Collar Midpoint to 10% above the Collar Midpoint; where the Collar Midpoint is greater than \$25.00 but less than or equal to \$50.00, the Collar Price Range shall be the range from 5% below the Collar Midpoint to 5% above the Collar Midpoint; and where the Collar Midpoint is greater than \$50.00, the Collar Price Range shall be the range from 3% below the Collar Midpoint to 3% above the Collar Midpoint.<sup>12</sup> According to the Exchange, the proposed rule change would provide greater transparency and certainty in Exchange Auctions by helping reduce the possibility that an auction would occur at a price that would qualify as a clearly erroneous under BATS Rule 11.17(c)(1) and limit the volatility in auction prices.<sup>13</sup>

##### B. Change to the Determination of the Auction Price

The Exchange has proposed to amend BATS Rule 11.23 to change how the Exchange determines the price for Exchange Auctions. Currently, to determine the auction price for an Exchange Auction, the Exchange first looks to whether there is at least one limit order either: (1) On the Continuous Book or Auction Book for Opening

<sup>10</sup> See BATS Rule 11.23(a)(9) defines "Final Last Sale Eligible Trade" as the last trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. Where the trade was not executed within the last one second, the last trade reported to the consolidated tape received by BATS during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. If there is no qualifying trade for the current day, the BATS Official Closing Price from the previous trading day will be used.

<sup>11</sup> See Notice *supra* note 3, at 76 FR 75460.

<sup>12</sup> See *id.* The Exchange has proposed to define "Collar Midpoint" in BATS Rule 11.23(a)(6) as the Volume Based Tie Breaker for all applicable auctions, except for IPO Auctions in Exchange Traded Products (as defined in Rule 11.8, Interpretation and Policy .02(d)(2)), for which the Collar Midpoint will be the issue price. See also Notice *supra* note 3, at 76 FR 75460.

<sup>13</sup> The Exchange noted that the modified Collar Price Range would not necessarily prevent all clearly erroneous executions from occurring as the Collar Price Range will be based on the Collar Midpoint and the numerical guidelines for clearly erroneous executions are based on the Reference Price, which is equal to the consolidated last sale immediately prior to the execution(s) under review. See Notice *supra* note 3, at 76 FR 75460 n. 7.

<sup>13</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.