

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68957; File No. SR-NYSEMKT-2013-14]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Temporary Suspension of Those Aspects of Rules 36.20—Equities and 36.21—Equities That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy Until the Earlier of When Phone Service Is Fully Restored or Friday, March 29, 2013

February 20, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on February 15, 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 extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy until the earlier of when phone service is fully restored or Friday, March 29, 2013. The text of the proposed rule change is available on the Exchange’s Web site at 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

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and Designated Market Makers (“DMMs”) to use personal portable phone devices on the Trading Floor⁴ following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.⁵ Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36—Equities requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

On November 5, 2012, although power had been restored to the downtown Manhattan vicinity, other services were not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange were still not fully operational on the Trading Floor, which continued to impact the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36—Equities. Accordingly, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 9, 2012,⁶ which was subject to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.⁷ On November 9, 2012, the

Exchange filed an additional extension of the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 16, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.⁸ On November 19, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, December 14, 2012, again subject to the same terms and conditions of the original temporary suspension that was filed.⁹ The continued extension of the temporary suspension was needed because of the ongoing intermittent phone and internet service. Specifically, the wired telephone lines and internet connections for Floor brokers continued to not be functional, many Exchange authorized and provided portable phones continued to not be functional and therefore Floor brokers still could not consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20—Equities and 36.21—Equities. On December 13, 2012, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, January 18, 2013, again subject to the same terms and conditions of the original temporary suspension that was filed.¹⁰ On January 17, 2013, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, February 15, 2013, again subject to the same terms and conditions of the original temporary

⁸ See Securities Exchange Act Release No. 68212 (Nov. 9, 2012), 77 FR 69536 (Nov. 19, 2012) (SR-NYSEMKT-2012-66). Because the telephone lines for the DMMs were operational, the Exchange did not need to extend the temporary suspension of Rule 36.30—Equities as it related to DMMs.

⁹ See Securities Exchange Act Release No. 68272 (Nov. 20, 2012), 77 FR 70871 (Nov. 27, 2012) (SR-NYSEMKT-2012-69). Relief was not extended for DMMs. See *infra* note 13.

¹⁰ See Securities Exchange Act Release No. 68451 (Dec. 17, 2012), 77 FR 75681 (Dec. 21, 2012) (SR-NYSEMKT-2012-82). Relief was not extended for DMMs. See *infra* note 13.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

⁵ See Securities Exchange Act Release No. 68138 (Nov. 1, 2012), 77 FR 66890 (Nov. 7, 2012) (SR-NYSEMKT-2012-59).

⁶ See Securities Exchange Act Release No. 68162 (Nov. 5, 2012), 77 FR 67720 (Nov. 13, 2012) (SR-NYSEMKT-2012-62).

⁷ See *supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

suspension that was filed.¹¹ The Exchange now seeks another extension of the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities because of ongoing telephone and internet issues.

The Exchange has been advised by its third-party carrier that the damage to the telephone connections continues to be more extensive than previously anticipated. In addition, there has been damage to the internet connections available to Floor brokers on the Trading Floor, which has adversely impacted service. In particular, the Exchange notes that the lines that support both the wired and wireless phone connections and internet connections for the Floor brokers are based in an area of lower Manhattan that suffered extensive damage as a result of Hurricane Sandy. The type of damage that was sustained will, in some cases, require the third-party carrier to rebuild the infrastructure that supports these services, rather than engage in repairs of existing lines. The process of rebuilding the infrastructure has been incrementally slow without significant improvement since the last extension request. While such rebuilding and repairs are in process, the telephone line and internet connections for Floor brokers still are not fully operational and may not be for another month, given the type of work that needs to be completed to restore the telephone services.

Because of the ongoing intermittent phone and internet service, many Exchange authorized and provided portable phones continue to not be functional and therefore many Floor brokers still cannot consistently use the Exchange authorized and provided portable phones, pursuant to Rules 36.20—Equities and 36.21—Equities. In addition, many of the wired telephone lines and internet connections for Floor brokers continue to not be functional. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone and internet service continues to be intermittent, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and

provided portable phones, wired phone lines, or internet connections.¹²

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, March 29, 2013.¹³ As noted above, the process of rebuilding the infrastructure has been incrementally slow without significant improvement since the last extension request. However, the Exchange believes that there will be significant improvement in the near future. The third-party carrier recently advised the Exchange that during the next month both the telephone and the Internet connections will be restored to Floor brokers on the Trading floor. The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities to permit use of the personal portable phones by Floor brokers on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.¹⁴

In particular, as set forth in the prior filings, Floor brokers that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period

¹² To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

¹³ Consistent with the existing relief, [sic] Exchange is not proposing to provide any relief to DMMs in this proposal. Because phone service to DMMs has been restored, the existing relief does not provide for a temporary suspension of Rule 36.30—Equities, which prohibits DMMs from using personal portable phones on the Trading Floor. Similarly, because the off-Floor locations for DMMs have been restored, the existing relief does not provide for the temporary suspension for DMMs to be permitted to communicate with off-Floor personnel who may not be located at their regular physical location. The Exchange is not proposing to provide such relief in this proposal. See *supra* notes 5 and 6 (notices describing the relief previously requested for DMMs).

¹⁴ See *supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (“FINRA”), on request.

In addition, to the extent that personal portable phones are used to replicate internet connections previously approved pursuant to Rule 36 that are not operational on the Trading Floor because of damage sustained by Hurricane Sandy, such use is subject to the same requirements that would otherwise be applicable, including record-retention requirements. This emergency relief is solely meant to maintain the status quo to the extent provided in Rule 36 and not intended to broaden the scope of the activities allowed pursuant to the Rule (e.g., accessing internet only at the booth). As with all member organization records, such cell phone data records must be provided to Exchange regulatory staff, including without limitation staff of FINRA, on request. To the extent that Exchange-approved telephone or electronic communications are operational, Floor brokers must use those connections rather than use a personal portable phone. Specifically, the Exchange states that Floor brokers must return to pre-Hurricane Sandy communications at any point when service is restored even if temporary.

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service and internet connections on the Trading Floor, the Exchange does not know how long the proposed temporary suspension of Rules 36.20—Equities and 36.21—Equities will be required. However, based on current estimates, the Exchange understands that phone service may be fully restored during the next month.

Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36—Equities that do not permit Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, March 29, 2013.¹⁵

¹⁵ The Exchange will provide notice of this rule filing to Floor brokers, including the applicable recordkeeping and other requirements. If telephone

¹¹ See Securities Exchange Act Release No. 68705 (January 22, 2013), 78 FR 5848 (January 28, 2013) (SR-NYSEMKT-2013-06). Relief was not extended for DMMs. See *infra* note 13.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36—Equities that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

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 extension of the temporary suspensions of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to

service is fully restored prior to March 29, 2013, the Exchange will notify Floor brokers that the temporary suspension of those aspects of Rule 36—Equities that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

use personal portable phone devices on the Trading Floor is in direct response to damages in the aftermath of Hurricane Sandy. The proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service, and thus should not have any burden on competition.

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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹ 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)²⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(ii),²¹ 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. The Commission notes that doing so will allow the Exchange to continue uninterrupted, for Floor brokers, the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filings seeking such relief, and to help maintain the status quo, until the earlier

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

of when phone service for Floor brokers is fully restored or March 29, 2013. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²²

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)²³ 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. Please include File Number SR-NYSEMKT-2013-14 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-2013-14. 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

²² 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).

²³ 15 U.S.C. 78s(b)(2)(B).

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-2013-14 and should be submitted on or before March 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68953; File No. 4-631]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Second 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.

February 20, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder,² notice is hereby given that, on January 23, 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 (the "Commission") a proposal to amend the Plan to Address Extraordinary Market Volatility ("Plan").³ The proposal represents the second amendment to the Plan ("Second Amendment"), and reflects changes unanimously adopted by the Participants. A copy of the Plan, as amended, is attached as Exhibit A hereto. Pursuant to Rule 608(b)(3)(iii) under Regulation NMS,⁴ the Participants designate the amendment as involving solely technical or ministerial matters. As a result, the amendment becomes effective upon filing with the Commission. The Commission is publishing this notice to solicit comments from interested persons on the Second Amendment to the Plan.

I. Rule 608(a) of Regulation NMS

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 would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.⁶ 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.⁷ The price bands would be calculated by the Securities Information Processors ("SIPs" or "Processors") responsible for

³ See Letter from Janet M. McGinness, Executive Vice Present & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated January 17, 2013 ("Transmittal Letter").

⁴ 17 CFR 242.608(b)(3)(iii).

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*.

consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.⁸ Those price bands would be 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 would be 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 would be calculated by applying double the Percentage Parameters.

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 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

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 ("First Amendment").

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.