original limit price is violated.[12] The commenter points to other precedents in the options markets for non-broker-dealer customers getting special treatment for similar reasons to the proposed rule change, namely because they are less active in the markets and often have limited funds in their accounts.[13] Finally, the commenter encourages other options exchanges to adopt similar amendments to their Obvious and Catastrophic Error rules.[14]

The Exchange notes that the proposed rule change is not unfairly discriminatory, even though it offers non-broker dealer customers a choice not provided to other market participants. Specifically, the Exchange notes that the existing obvious error rules differentiate among market participants.[15] The Exchange notes further that customers often are treated specially in the options markets, recognizing that they are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.[16] The Exchange goes on to note that, while the proposed rule change may introduce uncertainty regarding whether a trade will be adjusted or nullified, it eliminates price uncertainty, as customer orders can be adjusted to significantly different prices than their limit prices under the rule prior to this proposed rule change. For this reason, the Exchange believes that the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest.

The Commission notes that in considering the proposed rule change the Exchange has weighed the benefits of certainty to non-broker-dealer customers that their limit price will not be violated against the costs of increased uncertainty to market makers and broker-dealers that their trades may be nullified instead of adjusted depending on whether the other party to the transaction is or is not a customer.[17] The proposed rule change strikes a similar balance on this issue to the approach taken in the Exchange's Obvious Error Rule, whereby transactions in which an Obvious Error occurred with at least one party as a non-specialist are nullified unless both parties agree to adjust the price of the transaction within 30 minutes of being notified of the Obvious Error.[18] For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–PHLX–2013–005) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08328 Filed 4–9–13; 8:45 am]

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[12] Id.

[13] Id.

[14] Id.

[15] The Exchange notes, for example, that the notification period to begin the obvious error process is shorter for specialists and Registered Options Traders than it is for other market participants.

[16] The Exchange notes that customers often have favorable fees relative to other market participants.

[17] *See* Notice, *supra* note 3.

[18] Id.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69287; File No. 4–631]

Joint Industry Plan; Order Approving the Third 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.

April 3, 2013.

I. Introduction

On February 21, 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 (''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 third amendment to the Plan (''Third Amendment''), and reflects changes unanimously approved by the Participants. The Third Amendment proposes to amend the Plan to provide that odd-lot sized transactions will not be exempt from the limitation on trades provision of Section VI.A.1 of the Plan and proposes to make a clarifying technical change to Section VIII.A.3 of the Plan. The Third Amendment was published for comment in the **Federal Register** on March 12, 2013.[4] The Commission received one comment letter in response to the Notice.[5] This order approves the Third Amendment to the Plan.

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.[6] 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.[7] 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.[8] The price bands would be calculated by the Securities Information Processors (''SIPs'' or ''Processors'') responsible for consolidation of information for an

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Janet M. McGinness, Executive Vice President & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated February 19, 2013 (''Transmittal Letter'').

[4] *See* Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (''Notice'').

[5] *See* Letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth M. Murphy, Secretary, Commission, dated March 22, 2013 (''FIF Letter'').

[6] 17 CFR 242.600(b)(47). *See also* Section I(H) of the Plan.

[7] *See* Section V of the Plan.

[8] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan.

NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[9] Those price bands would be based on a Reference Price [10] 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 Parameter [11] 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 as set forth in Appendix A of the Plan.

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 National Best Bid [12] or National Best Offer [13] 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 would enter a Limit State,[14] and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[15] All trading would immediately enter 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 would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause, which would be applicable to all markets trading the security.

These limit up-limit down requirements would be coupled with trading pauses [16] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the Plan, all trading centers [17] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be 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 would be 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 would 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 would be 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,[18] thereby protecting investors and promoting a fair and orderly market.[19] In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[20] The initial date of Plan operations is April 8, 2013.[21]

B. Third Amendment to the Plan

The Third Amendment proposed two changes to the Plan. First, the Participants propose to amend Section VI.A.1 of the Plan to clarify that odd-lot sized transactions are not exempt from the limitation on trades provision of Section VI.A.1.[22] This provision requires trading centers in NMS stocks to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS stock. The Participants stated that they believe that odd-lot sized transactions should benefit from the protections of the Plan. Second, the Participants propose to amend Section VIII.A.3 of the Plan to clarify that during Phase I of implementation no price bands shall be calculated and disseminated and therefore trading shall not enter a Limit State less than 30

[9] 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[10] *See* Section I(T) of the Plan.

[11] 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.

[12] 17 CFR 242.600(b)(42). *See also* Section I(G) of the Plan.

[13] *Id.*

[14] 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.

[15] *See* Section I(D) of the Plan.

[16] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. 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.

[17] 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.

[18] 17 CFR 242.600(b)(47).

[19] *See* Transmittal Letter, *supra* note 3.

[20] The limit up-limit down mechanism set forth in the Plan would replace 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).

[21] *See* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013).

[22] The Commission notes that the Plan provisions regarding Trading Pauses apply to all trading in NMS Stocks, including odd-lot transactions.

minutes before the end of Regular Trading Hours. The Participants stated that the proposed change is designed to reduce confusion by correcting language in the Plan.

III. Comment Letter

The Commission received one comment letter in favor of the Third Amendment to the Plan.[23] The commenter stated that the proposed changes were raised since September 2012 in discussions that the commenter had with the Participants and that it had the understanding that amendments would be filed with the Commission to address these concerns. As such, market participants have programed their systems accordingly well in advance of the April 8, 2013 implantation date of the Plan.

The commenter further stated that one of the key drivers of the Plan is the protection of retail investors.[24] Thus, having odd-lots incorporated at the commencement of the rule is critical. Moreover, the commenter stated that the implementation of the Plan has evolved into a very complex process and it would prefer that odd-lots not be implemented on a different schedule possibly causing investor confusion.

IV. Discussion and Commission Findings

After careful review, the Commission finds that Third Amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[25] Specifically, the Commission finds that the Third Amendment is consistent with Section 11A of the Act [26] and Rule 608 thereunder [27] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system.

The Third Amendment would make two changes to the Plan. The first change amends the Plan to specify that odd-lot transactions will be subject to the limitation on trades provision of Section VI.A.1. As such, the requirement that trading centers in NMS stocks establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS stock will apply to odd-lot transactions. The Commission notes that this change could reduce the ability of market participants to engage in odd-lot transactions to circumvent the requirements of the Plan, thereby further protecting investors. The Commission also notes that the change is widely anticipated and supported in the industry, as it would reduce compliance burdens because firms would not need to code specially for odd lots.[28]

The second change would reconcile an inconsistency in the current rule text of the Plan. The current language states that the price bands shall not be calculated and disseminated less than 30 minutes before the end of the trading day, and that trading shall not enter a Limit State less than 25 minutes before the end of the trading day. Under this formulation, there would be no price bands after 3:30 p.m. ET, although a stock could still enter a Limit State until 3:35 p.m. ET. This is internally inconsistent, since the price bands must be calculated and disseminated in order for the Limit State to be triggered. The Participants proposed to amend the Plan to state that no price bands shall be calculated and disseminated and, therefore, trading shall not enter a Limit State, less than 30 minutes before the end of the trading day. The Commission believes that this change provides further clarity on the operation of the limit up-limit down mechanism during Phase I of the Plan.

Therefore, the Commission believes that the Third Amendment to the Plan is consistent with Section 11A of the Act [29] and Rule 608 thereunder.[30]

V. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [31] and Rule 608 thereunder,[32] that the Third Amendment to the Plan (File No. 4–631) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08249 Filed 4–9–13; 8:45 am]

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[23] *See* FIF Letter, *supra* note 5.

[24] *Id.*

[25] In approving the Third Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78k–1.

[27] 17 CFR 242.608.

[28] *See* FIF Letter.

[29] 15 U.S.C. 78k–1.

[30] 17 CFR 242.608.

[31] 15 U.S.C. 78k–1.

[32] 17 CFR 242.608.

[33] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69296; File No. SR–NSX–2013–12]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Rule 11.24, Limit Up/Limit Down

April 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2013, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') 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 comment 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 amend Rule 11.24(k) regarding routing of orders under the National Market System Plan established pursuant to Rule 608 of the Exchange Act, to address extraordinary market volatility (the ''Regulation NMS Plan to Address Extraordinary Market Volatility'' or ''Plan''),[3] also known as Limit Up/Limit Down. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[4]

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, on the Commission's Web site at *http://www.sec.gov*, 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 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Appendix A to Securities Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

[4] 17 CFR 240.19b–4(f)(6)(iii).