



8011-01

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-79410; File No. 4-631)

Joint Industry Plan; Notice of Filing of the Twelfth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.  
November 28, 2016

I. Introduction

On September 19, 2016, NYSE Group, Inc., on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility (“the Plan”):<sup>1</sup> Bats BZX

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<sup>1</sup> On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. See Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Plan Approval Order”). On February 20, 2013, the Commission noticed for immediate effectiveness the Second Amendment to the Plan. See Securities Exchange Act Release No. 68953, 78 FR 13113 (February 26, 2013). On April 3, 2013, the Commission approved the Third Amendment to the Plan. See Securities Exchange Act Release No. 69287, 78 FR 21483 (April 10, 2013). On August 27, 2013, the Commission noticed for immediate effectiveness the Fourth Amendment to the Plan. See Securities Exchange Act Release No. 70273, 78 FR 54321 (September 3, 2013). On September 26, 2013, the Commission approved the Fifth Amendment to the Plan. See Securities Exchange Act Release No. 70530, 78 FR 60937 (October 2, 2013). On January 7, 2014, the Commission noticed for immediate effectiveness the Sixth Amendment to the Plan. See Securities Exchange Act Release No. 71247, 79 FR 2204 (January 13, 2014). On April 3, 2014, the Commission approved the Seventh Amendment to the Plan. See Securities Exchange Act Release No. 71851, 79 FR 19687 (April 9, 2014). On February 19, 2015, the Commission approved the Eight Amendment to the Plan. See Securities Exchange Act Release No. 74323, 80 FR 10169 (February 25, 2015). On October 22, 2015, the Commission approved the Ninth Amendment to the Plan. See Securities Exchange Act Release No. 76244, 80 FR 66099 (October 28, 2015). On April 21, 2016, the Commission approved the Tenth Amendment to the Plan. See Securities Exchange Act Release No. 77679, 81 FR 24908 (April 27, 2016). On August 26, 2016, the Commission noticed for immediate effectiveness the Eleventh Amendment to the Plan. See Securities Exchange Act Release No. 78703, 81 FR 60397 (September 1, 2016).

Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., the Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, National Stock Exchange, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., and NYSE MKT LLC (collectively, the “Participants”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 608 thereunder,<sup>3</sup> a proposal to amend the Plan (“Twelfth Amendment”).<sup>4</sup> The proposal reflects changes unanimously approved by the Participants. The Twelfth Amendment proposes to provide that a Trading Pause<sup>5</sup> will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures, even if such reopening is more than 10 minutes after the beginning of a Trading Pause, and to require that trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock, as discussed below. A copy of the Plan, as proposed to be amended is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested persons on the Twelfth Amendment.<sup>6</sup>

## II.

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<sup>2</sup> 15 U.S.C 78k-1(a)(3).

<sup>3</sup> 17 CFR 242.608.

<sup>4</sup> See Letter from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Brent Fields, Secretary, Commission, dated September 16, 2016. (“Transmittal Letter”).

<sup>5</sup> Unless otherwise specified, the terms used herein have the same meaning as set forth in the Plan.

<sup>6</sup> 17 CFR 242.608.

### III. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the Twelfth Amendment, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,<sup>7</sup> prepared and submitted by the Participants to the Commission.<sup>8</sup>

#### A. Statement of Purpose and Summary of the Plan Amendment

The Participants filed the Plan on April 5, 2011, to create a market-wide Limit Up-Limit Down (“LULD”) mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act. The Plan sets forth procedures that provide for market-wide LULD requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. The LULD requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.

As set forth in more detail in the Plan, all trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan. More specifically, the Participants will cause and enable the single plan processor responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act to calculate and disseminate a Lower Price Band and Upper Price Band, as provided for in Section V of the Plan. Section VI of the Plan sets forth the LULD requirements of the Plan, and in particular, that all trading centers in NMS

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<sup>7</sup> See 17 CFR 242.608(a)(4) and (a)(5).

<sup>8</sup> See Transmittal Letter, supra note 4.

Stocks, including both those operated by Participants and those operated by members of Participants, shall 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, consistent with the Plan.

With respect to Trading Pauses, Section VII(A)(1) of the Plan provides that if trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor. Section VII(B)(1) of the Plan further provides that five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established procedures and the Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price. However, Section VII(B)(3) of the Plan currently provides that if the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in an NMS Stock, and has not declared a Regulatory Halt, all trading centers may begin trading the NMS Stock.

#### Overview of Proposed Amendments

The Participants propose to amend the Plan to provide that a Trading Pause will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures and reports a Reopening Price. The Participants further propose to eliminate the current allowance for a trading center to resume trading in an NMS Stock following a Trading Pause if the Primary Listing Exchange has not reported a Reopening Price within ten minutes after the declaration of a Trading Pause and has not declared a Regulatory Halt. In addition, to preclude potential scenarios when trading may resume without Price Bands, the Participants propose to amend the Plan to

provide that a trading center may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock. To address potential scenarios in which there is no Reopening Price from the Primary Listing Exchange to use to calculate Price Bands, the Participants propose to make related amendments to the Plan to address when trading may resume if the Primary Listing Exchange is unable to reopen due to a systems or technology issue and how the Reference Price would be determined in such a scenario or if the Primary Listing Exchange reopens trading on a zero bid or zero offer, or both.

In conjunction with filing this amendment to the Plan, each Primary Listing Exchange will file proposed rule changes with the Commission under Section 19(b) of the Exchange Act to amend their respective rules for automated reopenings following a Trading Pause consistent with a standardized approach agreed to by Participants that would allow for extensions of a Trading Pause if equilibrium cannot be met for a Reopening Price within specified parameters.<sup>9</sup> In addition, the Participants believe that the proposed amendments to the Plan, together with the proposed standardized approach to reopening trading following a Trading Pause, reduce the potential that an order or orders entered by a member of a Primary Listing Exchange would cause a reopening auction to execute at a clearly erroneous price. Accordingly, the Primary Listing Exchanges will file proposed rule changes with the Commission under Section 19(b) of the Exchange Act to amend their respective rules to preclude members from requesting review of a reopening auction as a clearly erroneous execution.<sup>10</sup>

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<sup>9</sup> The Commission notes that the Primary Listing Exchanges have filed associated proposed rule changes. See Securities Exchange Act Release Nos. 79162 (October 26, 2016), 81 FR 75875 (November 1, 2016) (SR-BatsBZX-2016-61); 79158 (October 26, 2016), 81 FR 75879 (November 1, 2016) (SR-NASDAQ-2016-131); and 79107 (October 18, 2016), 81 FR 73159 (October 24, 2016) (File No. SR-NYSEArca-2016-130).

<sup>10</sup> See supra note 9.

### Proposed Amendments to the Plan

To effect the proposed changes, the Participants propose the following amendments to the Plan:

First, the Participants propose to delete current Section VII(B)(3) of the Plan, which, as described above, currently provides that all trading centers may begin trading an NMS Stock if the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause and has not declared a Regulatory Halt. By deleting current Section VII(B)(3) of the Plan, trading centers would no longer be permitted to begin trading an NMS Stock ten minutes after declaration of a Trading Pause in an NMS Stock if the Primary Listing Exchange has not either reported a Reopening Price or declared a Regulatory Halt.

The Participants propose to replace Section VII(B)(3) of the Plan with new text that would provide that trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock. This amendment would thus require that a trading center may resume trading only if there are Price Bands. This amendment, together with the requirement that the Trading Pause would not end until the Primary Listing Exchange reports a Reopening Price, would ensure that any trading based on Price Bands must be based on the Reopening Price of the Primary Listing Exchange as the Reference Price for such Price Bands.

Second, the Participants propose to amend the Plan to provide procedures for situations in which the Primary Listing Exchange is unable to reopen an NMS Stock due to a systems or technology issue. As described above, the Participants propose to amend the Plan to require that trading centers must wait to resume trading in an NMS Stock following a Trading Pause until the Primary Listing Exchange disseminates a Reopening Price, at which point Price Bands will be available. The Participants believe that the Plan should include provisions to address a circumstance in which a Primary Listing Exchange is unable to reopen an NMS Stock due to a

systems or technology issue. As proposed, in such case, trading centers may resume trading an NMS Stock, but only if (i) the Primary Listing Exchange notifies the Processor that it is unable to reopen trading due to a systems or technology issue and (ii) the Processor has disseminated Price Bands based on a Reference Price.

To reflect this change, the Participants propose to amend Section VII(B)(2) of the Plan, which currently provides that the Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock for any reason other than a significant order imbalance and if it has not declared a Regulatory Halt. This section further provides that the Processor shall disseminate this information to the public, and all trading centers may begin trading the NMS Stock at this time. The Participants propose to amend this Section to be clear that the only time a trading center may resume trading in an NMS Stock in the absence of a Reopening Price from the Primary Listing Exchange is if the Primary Listing Exchange notifies the Processor that it is unable to reopen trading in an NMS Stock due to a systems or technology issue. The Participants believe that if a Primary Listing Exchange is unable to reopen trading due to a systems or technology issue, trading should be permitted to resume in that NMS Stock.

The Participants also propose to amend the last sentence of Section VII(B)(2) of the Plan to delete the phrase, “and all trading centers may begin trading the NMS Stock at this time” so that the sentence provides instead that “The Processor shall disseminate this information to the public.” The Participants believe that this proposed amendment clarifies that if a Primary Listing Exchange notifies the Processor that it is unable to reopen trading due to a systems or technology issue, the Processor would disseminate that information to the public.

Third, to clarify how Price Bands may be determined, the Participants propose to amend Section V(A)(1) of the Plan to add a new sentence before the last sentence of that section that

would address how a trading center may calculate and apply Price Bands that are the same as the Price Bands that would have been disseminated by the Processor before the trading center receiving such Price Bands from the Processor (“Synthetic Price Bands”). Currently, the first sentence of Section V(A)(1) provides that the Processor shall calculate and disseminate Price Bands for each NMS Stock to the public. However, there are limited circumstances currently in which a trading center may resume trading using Synthetic Price Bands calculated by the trading center, rather than using Price Bands received from the Processor. For example, in 2016, Primary Listing Exchanges implemented procedures to calculate and apply Synthetic Price Bands based on the Opening or Reopening Price sent to the Processor until Price Bands are received from the Processor. The proposed amendment would clarify the Plan and make clear that any trading center could calculate and apply Synthetic Price Bands.

Specifically, as proposed, if the Processor has not yet disseminated Price Bands, but a Reference Price is available, a trading center may calculate and apply Synthetic Price Bands based on the same Reference Price that the Processor would use for calculating such Price Bands until such trading center receives Price Bands from the Processor. The Participants believe that this proposed amendment would clarify that before Price Bands have been received from the Processor, a trading center may calculate and apply its own Synthetic Price Bands. An exception to a trading center trading based on Synthetic Price Bands would be, as described above in proposed amendments to Section VII(B)(3) [sic]<sup>11</sup>, when the Primary Listing Exchange is unable to reopen due to a systems or technology issue. In that scenario, all trading centers must wait for the Processor to disseminate Price Bands before trading may resume.

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<sup>11</sup> The Commission notes that the scenario where the Primary Listing Exchange is unable to reopen due to a systems or technology issue is discussed in the proposed amendment to Section VII(B)(2).

Fourth, the Participants propose to amend Section V(C), which describes how the Reference Price will be determined following a reopening. Currently, Section V(C)(1) specifies that the next Reference Price following a Trading Pause will be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause. Because, as described above, trading centers may not resume trading an NMS Stock if the Primary Listing Exchange does not disseminate a Reopening Price ten minutes after the beginning of the Trading Pause, the Participants propose to amend the first sentence of Section V(C)(1) of the Plan to delete the phrase “if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause.” The Participants also propose to delete the penultimate sentence of Section V(C)(1), which specifies that if the Reopening Price does not occur within ten minutes after the beginning of the Trading Pause, the first Reference Price following the Trading Pause shall be equal to the last effective Reference Price before the Trading Pause. With the proposed amendments to Section VII(B)(3), this Plan text is no longer necessary.

Fifth, the Participants propose to amend Section V(C)(1) to specify how the Reference Price would be determined following a Reopening. Currently, this Section provides that if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange. The Participants propose to close a gap in the current Plan that would allow for trading to resume without any Price Bands. Specifically, if a Primary Listing Exchange were to resume trading on a quote with either a zero bid or zero offer, or both, there would be no midpoint to report to the Processor as a Reopening Price, and therefore the Processor would not have a first Reference Price from which to calculate Price Bands following such Trading Pause. Currently, in such case, the Processor does not calculate and disseminate Price Bands until five minutes after the conclusion of the Trading Pause or if a trade occurs. Thus,

the first trade following the Trading Pause, if effected within five minutes following the end of the Trading Pause, would not be subject to Price Bands.

The Participants propose to amend the first sentence of Section V(C)(1) to provide that use of the Reopening Price from a Primary Listing Exchange as the first Reference Price is only when there is a transaction or quotation that does not include a zero bid or a zero offer from which to derive a midpoint. As with the current Plan, subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan.

To close the gap described above, the Participants also propose to specify what the first Reference Price would be if either the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue or the Primary Listing Exchange reopens trading with a quotation that has a zero bid or offer, or both. For these circumstances, the Participants propose to add a new sentence to Section V(C)(1) of the Plan that would provide that the next Reference Price would be the last effective Price Band that was in a Limit State before the Trading Pause. For example, if the Limit State that triggered a Trading Pause was the Lower Price Band price and the Primary Listing Exchange is unable to reopen to a systems or technology issue or the reopening quotation has a zero bid or zero offer, or both, the first Reference Price that the Processor would use to calculate Price Bands would be the last Lower Price Band. The Participants believe that in such circumstances, using the last effective Limit State that triggered the Trading Pause would be a closer approximation of the most recent trading in that NMS Stock. By using that Limit State Price as a Reference Price, the next calculated Price Bands would take into consideration the directional movement of the trading in that NMS Stock because it would allow for additional trading in the direction of the last Limit State. As with the current Plan, any subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

Sixth, the Participants propose to make a related change to Section V(A)(1) of the Plan regarding how Price Bands are calculated. The last sentence of this section currently provides that if a Reopening Price does not occur within ten minutes after the beginning of a Trading Pause, the Price Band, for the first 30 seconds following reopening after that Trading Pause, shall be calculated by applying triple the Percentage Parameters set forth in Appendix A. Because the Plan would provide for a resumption of trading in the absence of a Reopening Price only if the Primary Listing Exchange is unable to reopen due to a systems or technology issue, the Participants propose to revise this Plan text to reflect this proposed amendment. As proposed, this sentence would instead provide that if under Section VII(B)(2), the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue and it has not declared a Regulatory Halt, the Processor will calculate and disseminate Price Bands by applying triple the Percentage Parameters set forth in Appendix A for the first 30 seconds such Price Bands are disseminated.<sup>12</sup>

Seventh, the Participants propose to amend Section VII(B)(4) of the Plan, which currently provides that when trading begins after a Trading Pause, the Processor shall update the Price Bands as set forth in Section V(C)(1) of the Plan. Because, as described above, the Participants propose to amend the Plan to require that trading may not resume following a Trading Pause without Price Bands, the Participants propose to amend Section VII(B)(4) to provide the requirement for the Processor to update such Price Bands. As proposed, this section would provide that the Processor would update the Price Bands as set forth in Section V(C)(1) – (2) of the Plan after receiving

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<sup>12</sup> The Participants have convened a working group to study how NMS Stocks are tiered under the Plan, and as a related matter, the Percentage Parameters assigned to a tier. The Participants are not proposing at this time to revise any of the Percentage Parameters or tier determinations.

notification from the Primary Listing Exchange of a Reopening Price following a Trading Pause (or a resume message in the case of a reopening quote that has a zero bid or zero offer, or both), or that it is unable to reopen trading following a Trading Pause due to a systems or technology issue, provided that if the Primary Listing Exchange is unable to reopen due to a systems or technology issue, the update to the Price Bands would be no earlier than ten minutes after the beginning of the Trading Pause. This proposed amendment would make clear that the Participants will require the Processor to calculate and publish Price Bands in all potential scenarios following a Trading Pause. In addition, the proposed amendment would maintain the existing requirement that if a Primary Listing Exchange cannot reopen due to a systems or technology issue, trading would not resume until ten minutes after the beginning of the Trading Pause.

Eighth, the Participants propose to amend Section VII(C)(1) of the Plan, which currently provides that if a Trading Pause for an NMS Stock is declared in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen trading and shall attempt to execute a closing transaction using its established closing procedures. The Participants propose to amend this text to provide that if an NMS Stock is in a Trading Pause during the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall attempt to execute a closing transaction using its established closing procedures. With the proposed change to require all trading centers to wait to resume trading in an NMS Stock subject to a Trading Pause until the Primary Listing Exchange has reported a Reopening Price, it is possible that a Trading Pause that was declared before the last ten minutes of trading before the end of Regular Trading Hours could be extended until after the last ten minutes of trading before the end of Regular Trading Hours. The Participants believe that in such case, trading in such NMS

Stock should not resume, and instead the Primary Listing Exchange should attempt to execute a closing transaction using established closing procedures.

Ninth, the Participants propose to eliminate Trading Pauses following a Straddle State. Under Section VII(A)(2) of the Plan, a Primary Listing Exchange may declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State. A Straddle State is when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan’s goals to address extraordinary market volatility. Accordingly, under the Plan, declaring a Trading Pause is in the discretion of the Primary Listing Exchange for that NMS Stock. Since implementation of the Plan, there have not been any Trading Pauses declared following a Straddle State. The Participants therefore propose to eliminate Trading Pauses following a Straddle State as unnecessary.<sup>13</sup> In addition, the Participants believe that eliminating the ability for a Primary Listing Exchange to declare a Trading Pause following a Straddle State would promote transparency regarding the operation of the Plan as it would remove a discretionary circumstance for declaring a Trading Pause.

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<sup>13</sup> Straddle States were discussed in the “Limit Up –Limit Down: National Market System Plan Assessment to Address Extraordinary Market Volatility,” dated May 28, 2015, which was prepared for the Limit Up – Limit Down Operating Committee by James J. Angel, Associate Professor of Finance, Georgetown University and which was provided to the Commission (“Angel Report”). A copy of the Angel Report is available here: <https://www.sec.gov/comments/4-631/4631-39.pdf>. As noted in the Angel Report, the majority of Straddle States occurred in a limited number of low-liquidity NMS Stocks. They are often due to a lack of liquidity, and are resolved quickly. The Angel Report opined that a Trading Pause following the type of trading circumstances that leads to a Straddle State is unlikely to prevent any extreme trades or be followed by a re-opening cross. There have not been any Trading Pauses following a Straddle State since the publication of the Angel Report.

To effect this change, the Participants propose to (i) delete Section I(W), which defines the term “Straddle State” and renumber the definitions following that definition accordingly; (ii) delete section VII(A)(2) of the Plan, which describes how Trading Pauses following a Straddle State may be declared, and renumber current Section VII(A)(3) as new Section VII(A)(2); and (iii) delete the text relating to gathering raw data relating to Straddle States, as specified in Section II(A) of Appendix B.

Tenth, the Participants propose a non-substantive amendment to delete Sections VIII(A) - (C) of the Plan. These provisions currently set forth the schedule for implementing the Plan across all NMS Stocks. Because the Plan has been implemented across all NMS Stocks, the Participants believe it is no longer necessary to include this text in the Plan. As amended, Section VIII would state the initial date of Plan operations and the pilot end date.

Finally, the Participants propose non-substantive amendments to Section II(A) of the Plan (List of Parties) and Section X of the Plan (Counterparts and Signatures) to update the names of the exchanges owned by Bats Global Markets and to formally add the IEX to the list of signatories to the Plan.<sup>14</sup>

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The Participants believe that the proposed amendments to the Plan would be necessary or appropriate in the public interest for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act.

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<sup>14</sup> As provided for in Section II(C) of the Plan, IEX became a Participant in the Plan effective August 11, 2016.

Specifically, these proposed amendments to the Plan are designed to address the issues experienced on August 24, 2015 by reducing the number of repeat Trading Pauses in a single NMS Stock. The proposed Plan amendments are an essential component to Participants' goal of more standardized processes across Primary Listing Exchanges in reopening trading following a Trading Pause, and facilitates the production of an equilibrium Reopening Price by centralizing the reopening process through the Primary Listing Exchange, which would also improve the accuracy of the reopening Price Bands. The proposed Plan amendments support this initiative by requiring trading centers to wait to resume trading following Trading Pause until there is a Reopening Price. The proposed Plan amendments also support this initiative by providing greater clarity regarding how the Reference Price and Price Bands following a Trading Pause would be determined in all circumstances, including if the Primary Listing Exchange is unable to conduct a reopening due to a systems or technology issue or if the reopening quote is a zero bid or a zero offer, or both.

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan.

C. Implementation of Plan

The initial date of the Plan operations was April 8, 2013.

D. Development and Implementation Phases

The Plan was initially implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation began on April 8, 2013 and was completed on May 3, 2013. Implementation of Phase II of the Plan began on August 5, 2013 and was completed on February 24, 2014. Pursuant to the Ninth Amendment, the Participants extended

the Pilot until April 22, 2016.<sup>15</sup> Pursuant to the Tenth Amendment, the pilot period of the Plan was extended until April 21, 2017 and the proposed modifications described in the Tenth Amendment were implemented three months after SEC approval of Amendment No. 10.

The Participants propose to implement this amendment to the Plan no later than six months after approval of this amendment.

E. Analysis of Impact on Competition

The proposed Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

F. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan's Participants has executed a written amended Plan.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan;

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<sup>15</sup> See supra note 1.

(2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Section III(C) of the Plan provides that each Participant shall designate an individual to represent the Participant as a member of an Operating Committee. No later than the initial date of the Plan, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.

On September 13, 2016, the Operating Committee, duly constituted and chaired by Mr. Paul Roland, Nasdaq, met and voted unanimously to amend the Plan as set forth herein in accordance with Section III(C) of the Plan. The Plan Advisory Committee was notified in connection with the Twelfth Amendment.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Exchange Act. The Commission

encourages commenters to explain how data analysis, including prior Participant submitted data analysis on reopenings and Straddle States, informs their comments.

In addition, the Commission requests comment on the Participants' proposal to remove references to Straddle States in the Plan. To effect this change, the Participants propose to: (i) delete the definition of the term "Straddle State" in Section I(A)(W) of the Plan; (ii) delete section VII(A)(2) of the Plan, which provides that the Primary Listing Exchanges may declare a Trading Pause following a Straddle State and requires the Primary Listing Exchanges to develop policies and procedures for declaring a Trading Pause and notify the Processor in such circumstances; and (iii) remove the requirement to gather and provide to the Commission raw data relating to Straddle States as specified in Section II(A) of Appendix B.

The Commission notes that the provisions related to Straddle States were added to the Plan in response to concerns that a stock could remain in a Straddle State for an indefinite period of time.<sup>16</sup> In the Plan Approval Order, the Commission observed that the ability of a Primary Listing Exchange to declare a Trading Pause in response to a Straddle State should help to ensure that the market for a stock would not remain impaired for an indefinite period of time, while also providing the Primary Listing Exchange with the discretion to determine whether such impairment is inconsistent with the stock's normal trading characteristics.<sup>17</sup>

In their letter to the Commission regarding Amendment 12, the Participants noted that, since implementation of the Plan, the Primary Listing Exchanges have not exercised discretion to declare a Trading Pause in response to a Straddle State.<sup>18</sup> The Participants further noted that Straddle State

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<sup>16</sup> See Plan Approval Order, supra note 1, at 33503.

<sup>17</sup> See id., at 33509.

<sup>18</sup> See Transmittal Letter, supra note 4.

data reported in the Angel Report<sup>19</sup> showed that there were approximately 4.8 million Straddle States during the sample period and that over three quarters of Straddle States disappeared within one second. The Angel Report also showed that approximately 110,000 Straddle States lasted over fifteen seconds.

Commission staff has also conducted an analysis of Straddle States under the Plan, covering the period from May 12, 2014 to August 29, 2014, and found that most Straddle States occurred in Tier 2 securities.<sup>20</sup> Of the 2,073,497 Straddle States examined by Commission staff that occurred in Tier 2 securities, the vast majority of Straddle States lasted only five minutes.<sup>21</sup> However, more than 4,000 Straddle States lasted between five and 30 minutes, while more than 4,000 Straddle States lasted longer than 30 minutes.<sup>22</sup>

Accordingly, the Commission requests comment on whether the concerns outlined in the Plan Approval Order about stocks remaining in Straddle States for indefinite periods of time

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<sup>19</sup> See supra note 13.

<sup>20</sup> The analysis found that over 99.9% of Straddle States occurred in Tier 2 securities.

<sup>21</sup> For this part of the analysis, the Commission staff used data on Straddle States, which was provided to the Commission by the Participants as described in Appendix B of the Plan, to examine 6711 Tier 2 securities over a period of 78 trading days.

<sup>22</sup> Notably, this analysis was performed on a time period before the adoption of Amendment 10, which changed how opening reference prices are calculated if there is no trading in the opening auction. As such, it is possible the longer Straddle States observed in the analysis resulted from an opening reference price that was based on an opening auction with no trades and in which the midpoint of the opening bid and ask quotes significantly deviated from the previous day's closing price. However, information contained in the Angel Report suggests otherwise. See Angel Report supra note 13. Table 25 in the Angel Report shows that when all opening reference prices are included, 1.80% of all Straddle States last longer than 30 seconds. In contrast, when days with what Angel refers to as "bad" opening reference points are excluded, Table 27 in the Angel Report finds that 8.34% of the Straddle States last longer than 30 seconds. Id. If a "bad" opening reference price contributed to longer Straddle States, the percentage of Straddle States lasting longer than 30 seconds would likely decrease once "bad" opening reference prices are excluded, not increase.

continues to be a viable concern, and how the data analysis discussed above informs those concerns. In this regard, should the Plan continue to provide the discretion for Primary Listing Markets to declare a Trading Pause when an NMS Stock is in a Straddle State? Are there other alternatives to declaring a Trading Pause to address concerns about NMS Stocks remaining in Straddle States for indefinite periods of time? Should the Plan continue to provide for the collection of data related to Straddle States or should the Plan contain any mechanism to monitor Straddle States? Please explain.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-631 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-631. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the Participants' offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-631 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

By the Commission.

Robert W. Errett

Deputy Secretary

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