

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80455; File No. 4-631)

April 13, 2017

Joint Industry Plan; Order Approving the Thirteenth 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, NYSE National, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

I. Introduction

On February 13, 2017, NYSE Group, Inc., on behalf of the other parties¹ to the National Market System Plan to Address Extraordinary Market Volatility (the “Plan”), filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)² and Rule 608 thereunder,³ a proposal to amend the Plan.⁴ The proposal represents the thirteenth amendment to the Plan, and reflects proposed changes unanimously approved by the Participants (“Thirteenth Amendment”). The proposed Thirteenth Amendment was published for comment in the Federal Register on March 16, 2017.⁵ The Commission received no comment letters regarding the amendment. This order approves the Thirteenth Amendment to the Plan as proposed.

¹ Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., the Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., NYSE MKT LLC, and NYSE National Inc. (collectively, the “Participants”).

² 15 U.S.C. 78k-1.

³ 17 CFR 242.608.

⁴ See Letter from Elizabeth King, General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated February 10, 2017 (“Transmittal Letter”).

⁵ See Securities Exchange Act Release No. 80203 (March 10, 2017), 82 FR 14068.

II. Description of the Proposal

In the Thirteenth Amendment, the Participants propose to (1) extend the pilot period of the Plan from April 21, 2017 to April 16, 2018; (2) require the Processor to publish, in connection with a reopening after a Trading Pause, the auction reference price, auction collars, and number of extensions to the reopening auction, as provided by the Primary Listing Exchange; and (3) amend the Plan to reflect name changes of certain Participants.⁶

III. Discussion and Commission Findings

The Commission finds that the Thirteenth Amendment is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the Thirteenth Amendment is consistent with Section 11A of the Act⁷ and Rule 608 thereunder⁸ in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and that it removes impediments to, and perfects the mechanism of, a national market system.

The Participants propose to extend the pilot period for an additional year to April 16, 2018. As the Participants note, the planned implementation date for the twelfth amendment to the Plan (“Twelfth Amendment”)⁹ and the related Primary Listing Exchanges’ amended reopening procedures is scheduled to be during the third quarter of 2017, which is after the end date of the current pilot period. In addition, the Participants state that an extension of the pilot period would provide additional time for the Participants, the Commission, and the public to

⁶ Unless otherwise specified, the terms used herein have the same meaning as set forth in the Plan.

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 242.608.

⁹ See Securities Exchange Act Release No. 79845 (January 19, 2017), 82 FR 8551 (January 26, 2017) (order approving the Twelfth Amendment).

consider other potential modifications to the Plan that are currently under consideration, including changes to how NMS Stocks are tiered under the Plan and the applicable percentage parameters associated with such tiers, whether double-wide Price Bands at the open and close of trading should be eliminated, and recommendations made by the Equity Market Structure Advisory Committee with respect to Plan operations.¹⁰ Finally, the Commission understands that the Participants continue to review and analyze the harmonization of clearly erroneous execution rules with the Plan, such that these rules could not be used to break trades occurring within Price Bands absent a legitimate technical failure at a Self-Regulatory Organization.¹¹

The Commission believes that a one-year extension of the Plan will allow the Participants to implement and assess the changes the Plan under the Twelfth Amendment. In addition, the extension of the pilot period will provide Participants with additional time to continue their examination and analysis of the matters described above. Accordingly, the Commission believes that it is appropriate in the public interest, for the protection of investors and the maintenance of a fair and orderly market to approve the amendment to extend the pilot period until April 16, 2018.

The Participants also propose to amend Section VII(B)(1) of the Plan to specify that the Processor would publish certain information that the Primary Listing Exchange would provide to the Processor in connection with reopening an NMS Stock after a Trading Pause. Specifically, the Processor will publish the auction reference price; auction collars; and number of extensions

¹⁰ See U.S. Securities and Exchange Commission Equity Market Structure Advisory Committee, Recommendations for Rulemaking on Issues of Market Quality, dated November 29, 2016, available at <https://www.sec.gov/spotlight/emsac/emsac-recommendations-rulemaking-market-quality.pdf>.

¹¹ See Securities Exchange Act Release No. 77679 (April 21, 2016), 81 FR 24908, 24909 (April 27, 2016) (order approving the Tenth Amendment).

to the reopening auction. This information will provide greater transparency regarding whether an NMS Stock will reopen at the end of the scheduled Trading Pause, or if such Trading Pause has been extended beyond the five-minute period contemplated in the Plan. The Commission believes that it is appropriate in the public interest, for the protection of investors and the maintenance of a fair and orderly market to approve this proposed change because it should enhance transparency about the reopening processes during a Trading Pause.

Finally, the Participants propose to amend the Plan to reflect name changes of certain Participants. The Commission believes that it is appropriate in the public interest, for the protection of investors and the maintenance of a fair and orderly market to approve this proposed change because it ensures that the Plan remains accurate and up-to-date.

For the reasons noted above, the Commission finds that the Thirteenth Amendment to the Plan is consistent with Section 11A of the Act¹² and Rule 608 thereunder.¹³ The Commission reiterates its expectation that the Participants will continue to monitor the scope and operation of the Plan and study the data produced, and will propose any modifications to the Plan that may be necessary or appropriate.¹⁴

¹² 15 U.S.C. 78k-1.

¹³ 17 CFR 242.608.

¹⁴ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act¹⁵ and Rule 608 thereunder,¹⁶ that the Thirteenth 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.¹⁷

Brent J. Fields
Secretary

¹⁵ 15 U.S.C. 78k-1.

¹⁶ 17 CFR 242.608.

¹⁷ 17 CFR 200.30-3(a)(29).