

Exchange notes the existence of SEC Rule 15c3-5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange also believes that the aspect of the proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. In Amendment No. 1, the Exchange represents that it recognizes that this provision is limited and that it will administer the provision in a manner that is consistent with the principles of the Act. In addition, the Exchange represents that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, pursuant to Amendment No. 1, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide to the Commission with data

requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, NYSE Euronext submitted a letter on behalf of the Exchange, stating that the Exchange will provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.³¹ This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to

³¹ In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Rule 953.1NY(c), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: Stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. See NYSE Letter, *supra* note 5.

review trades submitted during a Limit State or Straddle State.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act³² for approving the proposed rule change on an accelerated basis. This proposal is related to the Plan, which will become operative on April 8, 2013, and aspects of the proposal, such as rejecting market orders and not electing Stop Orders during the Limit and Straddle States, are designed to prevent such orders from receiving poor executions during those times.³³ In granting accelerated approval, the proposed rule change, and any attendant benefits, will take effect upon the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act³⁴ that the proposed rule change (SR-NYSEMKT-2013-10) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69331; File No. SR-BATS-2013-016]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving, on an Accelerated Basis, Proposed Rule Change To Modify the BATS Options Market Maker Obligation Rule

April 5, 2013.

I. Introduction

On March 1, 2013, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act"),² and Rule 19b-4 thereunder,³ a proposed rule change to modify the BATS Options Market ("BATS Options") Market Maker

³² 15 U.S.C. 78s(b)(2)

³³ See *supra* note 17.

³⁴ 15 U.S.C. 78f(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

obligation rule. The proposed rule change was published for comment in the **Federal Register** on March 12, 2013.⁴ The Commission received no comment letters on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.⁵ This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.⁶ The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.⁷

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan⁸ pursuant to Section 11A

of the Act,⁹ and Rule 608 thereunder,¹⁰ which featured a “limit up-limit down” mechanism (as amended, the “Limit Up-Limit Down Plan” or “Plan”).

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors¹¹ are required to disseminate such National Best Bid or National Best Offer¹² with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the 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 does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support

the Plan’s goal to address extraordinary market volatility.¹³

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.¹⁴ The first phase of the Plan shall be implemented beginning April 8, 2013.¹⁵

III. Description of the Proposal

In light of and in connection with the Limit Up-Limit Down Plan, BATS is amending Rule 22.6(d) to suspend the obligation of Market Makers registered with BATS Options to enter continuous bids and offers during a halt, suspension, or pause in trading of the underlying security.

Currently, under Rule 22.6(d), BATS Options requires Market Makers to enter continuous bids and offers for the options series to which it is registered in at least 75% of the options series in which the Market Maker is registered. The Exchange’s proposal would suspend a Market Maker’s continuous quoting obligation for the duration that an underlying NMS stock is in a Limit State or a Straddle State. The Exchange’s proposal would also suspend those obligations during a trading halt, suspension, or pause (collectively, a “Trading Halt”) in the underlying security. Following a trading halt, the market maker’s quoting obligations would only resume following the first regular-way transaction on the primary listing market in the underlying security.

¹³ As set forth in more detail in 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 be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently 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.

¹⁴ See “Limit Up-Limit Down Plan,” *supra* note 6. See also Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

¹⁵ See “Second Amendment to Limit Up-Limit Down Plan,” *supra* note 14.

⁴ See Securities Exchange Act Release No. 69038 (March 5, 2013), 78 FR 15773.

⁵ The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (“CFTC”) and the Commission. See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, “Findings Regarding the Market Events of May 6, 2010,” dated September 30, 2010, available at <http://www.sec.gov/news/studies/2010/marketevents-report.pdf>.

⁶ For further discussion on the development of the single-stock circuit breaker pilot program, see Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (“Limit Up-Limit Down Plan” or “Plan”).

⁷ See Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033) (describing the “second stage” of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the “third stage” of the single-stock circuit breaker pilot).

⁸ NYSE Euronext filed on behalf of New York Stock Exchange LLC (“NYSE”), NYSE Amex LLC (“NYSE Amex”), and NYSE Arca, Inc. (“NYSE Arca”), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (“CBOE”), 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”). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (“NYSE MKT”). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR-NYSEAmex-2012-32).

⁹ 15 U.S.C. 78k-1.

¹⁰ 17 CFR 242.608.

¹¹ As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. See *id.*

¹² “National Best Bid” and “National Best Offer” has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. See *id.*

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and 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 regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to suspend a Market Maker's obligations when the underlying security is in a limit up-limit down state is consistent with the Act. When the underlying is in a Limit or Straddle State or is subject to a Trading Halt,¹⁸ there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a Market Maker's obligations in these limited circumstances is consistent with the Act.

¹⁶ In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ The Commission notes that, pursuant to BATS Rule 20.5, BATS will halt trading in the option when the trading in the underlying is halted as a result of a circuit breaker. Therefore, the proposal to suspend market maker quoting obligations when the underlying is subject to a trading halt would apply to other, non-circuit breaker-related instances when the underlying is no longer trading, but, pursuant to Rule 20.3, BATS has elected to continue trading the overlying option.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act¹⁹ for approving the proposed rule change on an accelerated basis. The proposal is in part related to the Plan, which will become operative on April 8, 2013.²⁰ Without accelerated approval, the proposed rule change, and any attendant benefits, would take effect after the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act²¹ that the proposed rule change (SR-BATS-2013-016) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69342; File No. SR-MIAX-2013-12]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Obvious Errors in Limit or Straddle States

April 8, 2013.

I. Introduction

On March 22, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to provide for how the Exchange proposes to treat erroneous options transactions in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the "Plan"). The proposed rule change was published for comment in the **Federal Register** on March 27, 2013.³ The Commission received one comment letter on the proposal.⁴ This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Since May 6, 2010, when the financial markets experienced a severe disruption, the equities exchanges and the Financial Industry Regulatory Authority have developed market-wide measures to help prevent a recurrence. In particular, on May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.⁵ The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands, creating a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks.⁶

In connection with the implementation of the Plan, the Exchange proposes to adopt Commentary .06 to Rule 521 to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rule 521 for a one year pilot basis following the adoption of the proposed rule change.⁷ The Exchange proposes to adopt new Rule 530(j) to apply to erroneous transactions in options when the underlying NMS Stock has entered either a Limit or Straddle State. In addition, the Exchange proposes to retain the ability to review all erroneous transactions that occur during Limit States and Straddle

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 69210 (March 22, 2013), 78 FR 18637 ("Notice").

⁴ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Douglas M. Schafer, Executive Vice President, Chief Information Officer, MIAX, dated February [sic] 5, 2013 ("MIAX Letter").

⁵ Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498.

⁶ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁷ The Exchange stated that members of the Exchange staff have spoken to its member organizations about obvious and catastrophic errors during a Limit State or Straddle State and that the Exchange has received generally favorable feedback concerning its proposed rule change, given the built-in customer protections in the Exchange system.

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ See *supra* note 15.

²¹ 15 U.S.C. 78f(b)(2).

²² 17 CFR 200.30-3(a)(12).