

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71162; File No. SR-BATS-2013-066)

December 20, 2013

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Adopt Rules to Hold a Volatility Closing Auction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 19, 2013, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.23, which governs auctions conducted on the Exchange for Exchange listed-securities.

The text of the proposed rule change is available at the Exchange’s website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

The Exchange proposes to add a new auction type to its rules, a Volatility Closing Auction, which will apply any time that an Exchange-listed security is halted between 3:50 p.m. and 4:00 p.m. E.T. In particular, the Exchange proposes to add the Volatility Closing Auction in preparation for the operation during the last 15 minutes of Regular Trading Hours³ of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or "Plan"), as further described below.⁴ The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.⁵ The requirements of the Plan are coupled with Trading Pauses, or halts, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

Background

On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.⁶ The Plan first became operational in April of 2013, with a staged rollout with respect to the portion of the trading day to which the Plan applies as well as the securities subject to the

³ Regular Trading Hours are defined in Exchange Rule 1.5(w) as the time between 9:30 a.m. to 4:00 p.m. E.T.

⁴ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility).

⁵ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁶ See supra note 4.

Plan. All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.⁷ As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.⁸ When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors disseminate the National Best Bid (Offer) with an appropriate flag identifying it as non-executable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors distribute the National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.⁹

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.¹⁰ Trading for an NMS stock exits 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 does not exit a Limit State within 15 seconds, then the Primary Listing Exchange declares a five-minute Trading Pause pursuant to Section VII of the Limit Up-Limit Down Plan, which Trading Pause is applicable to all markets trading the security.¹¹ In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit

⁷ The Exchange is a Participant in the Plan.

⁸ See Section (V)(A) of the Plan.

⁹ See Section VI(A) of the Plan.

¹⁰ See Section VI(B)(1) of the Plan.

¹¹ 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.

State. For example, assume the Lower Price Band for an NMS Stock is \$9.50 and the Upper Price Band is \$10.50, such NMS stock would be in a Straddle State if the National Best Bid were below \$9.50, and therefore non-executable, and the National Best Offer were above \$9.50 (including a National Best Offer that could be above \$10.50). If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a Trading Pause for that NMS Stock.

As currently implemented, the Limit Up-Limit Down Plan applies to securities between 9:30 a.m. and 3:45 p.m. E.T. each trading day. In the near future, the operation of the Plan will be extended to include the time between 3:45 p.m. and 4:00 p.m. E.T., which is the end of Regular Trading Hours on the Exchange and is when the Exchange typically conducts a Closing Auction for each of its listed securities. The Exchange proposes to adopt rules for a Volatility Closing Auction in connection with the extension of the Plan to the end of Regular Trading Hours. As described in additional detail below, the Volatility Closing Auction will operate in some ways like a Halt Auction, for which the Exchange's process is described in Rule 11.23(d), and in some ways like a Closing Auction, for which the Exchange's process is described in Rule 11.23(c).

Proposed Amendment to Rule 11.23

The Exchange proposes to add new paragraph (e) to Rule 11.23 to govern the operation of Volatility Closing Auctions on the Exchange, which will be auctions of Exchange-listed securities that are halted in the last 10 minutes of Regular Trading Hours. As noted above, a Volatility Closing Auction would operate in certain respects like an Exchange Halt Auction and in other respects like an Exchange Closing Auction.

Similar to a Halt Auction on the Exchange, a Volatility Closing Auction will have a period of time that orders are accepted for participation in such auction during which no trading is occurring on the Exchange (the “Quote-Only Period”). The Quote-Only Period with respect to a Volatility Closing Auction would commence at the time a security is halted between 3:50 p.m. and 4:00 p.m. and will end at 4:00 p.m. Thus, to the extent the Exchange halts a security after 3:55 p.m. but before 4:00 p.m., such security will be halted for less than five minutes prior to the Volatility Closing Auction. The Exchange believes this is appropriate because it will ensure that the final auction of the day in all Exchange-listed securities consistently occurs at 4:00 p.m. E.T.

During the Quote-Only Period of a Volatility Closing Auction the Exchange will accept all orders eligible to participate in both a Halt Auction and a Closing Auction in order to avoid participant confusion and to facilitate participation in the Volatility Closing Auction. This includes limit and market orders as well as any Eligible Auction Orders applicable to a Closing Auction on the Exchange. Thus, the Exchange will accept Regular Hours Only orders (“RHOs”), Limit-On-Close orders (“LOCs”), Late-Limit-On-Close orders (“LLOCs”) and Market-On-Close orders (“MOCs”) for participation in a Volatility Closing Auction, and the typical restrictions on such orders will apply. For instance, as with a Closing Auction, the Exchange will not accept any LOCs or MOCs after 3:55 p.m. E.T. Similarly, the Exchange will not accept any LLOCs before 3:55 p.m. E.T. The Exchange would like to note, however, that, while these restrictions remain in place, regular limit and market orders can be entered and cancelled without restriction at any time prior to execution. In contrast to a typical Closing Auction, however, because the Exchange is accepting Eligible Auction Orders only to facilitate participation in and avoid confusion during the Volatility Closing Auction and because a User could alternatively enter and cancel limit orders and market orders without restriction during the

Quote-Only Period, Eligible Auction Orders associated with a Volatility Closing Auction may also be cancelled at any time prior to execution.¹²

The Exchange will disseminate the same information that it does for other auctions conducted on the Exchange. Thus, coinciding with the beginning of the Quote-Only Period for a security and updated every five seconds thereafter, the Reference Price, Indicative Price, Auction Only Price, and the lesser of Reference Buy Shares and Reference Sell Shares associated with the Volatility Closing Auction will be disseminated by the Exchange via electronic means.

As a general matter, the Exchange will not extend the Quote-Only Period associated with a Volatility Closing Auction, which is the same as with a Closing Auction. In contrast, the Exchange's rules related to Exchange Halt Auctions provide that the Quote-Only Period may be extended where there are unmatched market orders on the auction book associated with the auction and where the indicative price moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the Halt Auction, both to ensure that there is sufficient interest and stability after a halt to reopen the security for trading. Halt Auctions, however, occur during Regular Trading Hours and the Exchange retains discretion to not extend the Quote-Only Period of a Halt Auction such that it would interfere with a Closing Auction. While the Exchange acknowledges that some of the same issues for which the ability to extend the Quote-Only Period of a Halt Auction may exist where there are unmatched market orders or dramatic price movements near the end of the Quote-Only Period of the Volatility Closing Auction, the Exchange believes that these concerns are outweighed by the importance of providing Members and the investing public with a definitive market close and a BATS Official Closing Price at 4:00 p.m. E.T. More specifically, the Exchange believes that the clarity that comes from requiring that a Volatility

¹² In a Closing Auction, LOC and MOC orders cannot be cancelled in the five minutes leading up to the auction.

Closing Auction occurs at 4:00 p.m. E.T. will help reduce uncertainty for Members participating in the Volatility Closing Auction. Even where a halt is declared very near 4:00 p.m. E.T., the Exchange believes that it is in the interest of a fair and orderly market to hold the Volatility Closing Auction at 4:00 p.m. E.T. and has proposed that all Volatility Closing Auctions be required to close at a price level within the Collar Price Range in order to ensure that the Volatility Closing Auction price is based on rational and based on current market conditions. The Exchange further restricts the price of a Volatility Closing Auction by using the Final Last Sale Eligible Trade as the Volatility Closing Auction price where no limit orders from one or both sides would participate in the Volatility Closing Auction. This restriction ensures that there is crossed limit interest in the Volatility Closing Auction if the Volatility Closing Auction price is going to look to the entered limit interest to determine the price, which prevents a single limit order from interacting with market orders to determine the Volatility Closing Auction Price. Finally, the Exchange notes that it retains discretion under Rule 11.23(f) (re-numbered pursuant to this proposal, as described below) to adjust the timing of or suspend an auction with prior notice to Users where the interests of a fair and orderly market so require. In a situation where the Exchange deemed it necessary to adjust the timing of a Volatility Closing Auction in order to maintain a fair and orderly market, i.e., to a time later than 4:00 p.m. E.T., the Exchange would notify Exchange Users in advance of the time that the auction would occur and would provide for a Quote-Only period prior to such auction.

The Exchange will conduct a Volatility Closing Auction in a manner similar to a Halt Auction. Specifically, orders will be executed at the price that maximizes the number of shares executed in the auction. For ETPs, orders will be executed at the price level within the Collar Price Range that maximizes the number of shares executed in the auction. In the event of a

volume based tie at multiple price levels, the price level closest to the Final Last Sale Eligible Trade will be used for Volatility Closing Auctions. Where no limit orders from one or both sides (the buy side, the sell side, or both the buy and sell side) would participate in a Volatility Closing Auction, the Volatility Closing Auction will occur at the price of the Final Last Sale Eligible Trade. The only differences between the processing of a Halt Auction and a Volatility Closing Auction are that: (1) the Volatility Closing Auction price will be used as the official closing price for dissemination to the consolidated tape (the “BATS Official Closing Price”), and (2) a Volatility Closing Auction will not be delayed due to a market order imbalance or due to a significant change in the Indicative Price, which can extend the Quote-Only Period of a Halt Auction, as explained above.

The Exchange also proposes to process a Volatility Closing Auction in a manner consistent with both all auctions conducted by the Exchange, in that, as proposed, market orders, including MOCs, will have higher priority than other Volatility Closing Auction Eligible Orders. To the extent there is executable contra side interest, such market orders will be executed at the BATS Official Closing Price according to time priority. After the execution of all market orders, the remaining orders priced at or more aggressively than the BATS Official Closing Price will be executed on the basis of price/time priority.

The Exchange will transition to the After Hours Trading Session¹³ following a Volatility Closing Auction in much the way that it does for a Closing Auction. Thus, limit order shares that are not executed in the Volatility Closing Auction will remain on the Exchange’s order book during the After Hours Trading Session, subject to a User’s instructions and the fact that certain auction specific limit orders will be cancelled. RHO, LOC, LLOC, MOC and market order

¹³ The After Hours Trading Session is defined in Exchange Rule 1.5(c) and currently means the time between 4:00 p.m. to 5:00 p.m. E.T.

shares that are not executed in the Volatility Closing Auction will be cancelled at the conclusion of the Volatility Closing Auction. Thus, the only difference between this transition and a typical Closing Auction is that market orders are also cancelled, which differs only because such orders may enter the Volatility Closing Auction in the first place. Other than MOCs, which are specifically designated for a Closing Auction, market orders cannot participate in Closing Auctions because they do not post to the Continuous Book,¹⁴ and thus the Exchange does not address their transition to the After Hours Trading Session in its Closing Auction transition process.

In addition to the changes described above, in order to correct a typographical error in the original filing that proposed Rule 11.23, the Exchange proposes to re-number paragraphs (g), (h) and (i) as (f), (g) and (h), respectively. Finally, the Exchange proposes to add a reference to the new auction type, a Volatility Closing Auction, to current paragraph (h) (to be re-numbered as (g)).

2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹⁵ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁶ because it would promote just and equitable principles of trade, remove impediments to, and perfect the

¹⁴ Market orders received by the Exchange are executed or routed by the Exchange to other market centers but do not post to the Exchange's Continuous Book. See Rules 11.9(a)(2), 11.13(a)(1) and 11.13(a)(2). The Continuous Book is defined in Exchange Rule 11.23(a)(7) as all orders on the BATS Book that are not Eligible Auction Orders.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that operation of a Volatility Closing Auction for securities listed on the Exchange will assist in the price discovery process and help to ensure a fair and orderly market for securities listed on the Exchange that are halted at the end of the trading day. Specifically, the proposed Volatility Closing Auction will address situations where a security is halted in the last 10 minutes of the trading day in order to hold a single auction at the end of Regular Trading Hours. The Exchange believes this proposal is consistent with the Act and the Plan as it will ensure that market participants have a single closing price at the end of the trading day. Consistent with this belief, as discussed above, although the same conditions could occur with a Volatility Closing Auction that in certain circumstances cause the extension of the Quote-Only Period for a Halt Auction on the Exchange (i.e., a significant imbalance or price movement), the Exchange believes that concerns related to these conditions are outweighed by the importance of providing Members and the investing public with a definitive market close and a BATS Official Closing Price at 4:00 p.m. E.T. More specifically, the Exchange believes that the clarity that comes from requiring that a Volatility Closing Auction occurs at 4:00 p.m. E.T. will help reduce uncertainty for Members participating in the Volatility Closing Auction. As explained above, the Exchange has proposed various price and execution constraints for the Volatility Closing Auction to ensure that the auction occurs at a price that is based on rational and based on current market conditions. Finally, the Exchange reiterates that it retains discretion under Rule 11.23(f) to adjust the timing of or suspend an auction with prior notice to Users where the interests of a fair and orderly market so require. Without the proposal, the Exchange could potentially have a Halt Auction within minutes of the Closing Auction, which could cause unnecessary confusion. The Exchange reiterates that all aspects of the

proposed Volatility Closing Auction are based upon existing processes built into both the Exchanges' Halt Auction and the Exchange's Closing Auction. The Exchange further believes that its proposal to allow participants to cancel orders specifically designated for a Closing Auction up to the time of the Volatility Closing Auction is appropriate because the halt in the last 10 minutes of the trading day necessitating a Volatility Closing Auction may be indicative of price dislocation in a security and because such orders may have been entered well before such halt occurred. The Exchange believes it is appropriate and in the best interests of investors and the public interest to allow orders to be cancelled in such an event. Finally, the Exchange notes that its existing Halt Auction process allows orders to be cancelled prior to such auction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal enhances cooperation among markets and other trading venues to promote fair and orderly markets and to protect the interests of the public and of investors. The Limit Up-Limit Down Plan is part of a coordinated effort amongst various parties including the Exchange and other self-regulatory organizations as well as other market participants. While the specific proposals to implement changes to Exchange functionality consistent with the Plan may differ in certain ways from the implementation adopted by other market centers, the Exchange believes its proposals are consistent with the requirements and purpose of the Plan. Specifically, the proposed Volatility Closing Auction will address situations where a security is halted in the last 10 minutes of the trading day in order to hold a single auction at the end of Regular Trading Hours.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2013-066 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2013-066. 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 rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-BATS-2013-066, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).