

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64435; File No. SR-BATS-2011-016)

May 6, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Extend a Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility

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 May 4, 2011, 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 Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program previously approved by the Commission related to Rule 11.18, entitled “Trading Halts Due to Extraordinary Market Volatility,” to include additional securities in the pilot by which such rule operates. The Exchange also proposes to amend Rule 11.8, entitled “Obligations of Market Makers,” to conform certain of the percentages thereunder consistent with the proposed changes to the pilot.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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

The Exchange proposes to extend a pilot program previously approved by the Commission related to Rule 11.18, entitled “Trading Halts Due to Extraordinary Market Volatility,” to include additional securities in the pilot by which such rule operates. The Exchange also proposes to amend Rule 11.8, entitled “Obligations of Market Makers,” to conform certain of the percentages thereunder consistent with the proposed changes to the pilot.

The Commission approved Rule 11.18(d) on a pilot basis on June 10, 2010 to allow the Exchange to pause trading in an individual stock when the primary listing market for such stock issues a trading pause due to extraordinary market volatility (“Trading Pause”) in a security included within the S&P 500® Index (“S&P 500”) (“Trading Pause Pilot” or “Pilot”).³ The Exchange subsequently received approval to add to the Pilot the securities included in the

³ The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR-BATS-2010-014; SR-EDGA-2010-01; SR-EDGX-2010-01; SR-BX-2010-037; SR-ISE-2010-48; SR-NYSE-2010-39; SR-NYSEAmex-2010-46; SR-NYSEArca-2010-41; SR-NASDAQ-2010-061; SR-CHX-2010-10; SR-NSX-2010-05; and SR-CBOE-2010-047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025).

Russell 1000[®] Index (“Russell 1000”) and a specified list of Exchange Traded Products (“ETPs”).⁴

The Exchange has continued to assess whether additional securities need to be added to the Pilot and whether the parameters of Rule 11.18 need to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchange proposes to include all NMS stocks within the Pilot that are not already included therein. Accordingly, the Exchange proposes to modify the definition of “Circuit Breaker Securities” in Interpretation and Policy .05 to Rule 11.18 to include all NMS stocks. The Exchange is not proposing any other changes to the text of Rule 11.18 or the operation of the Pilot, and will continue to assess whether the parameters for invoking a Trading Pause continue to be appropriate and whether the parameters should be modified.⁵

⁴ The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and ETPs, where applicable, for all equities exchanges and FINRA. See Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR-BATS-2010-018; SR-BX-2010-044; SR-CBOE-2010-065; SR-CHX-2010-14; SR-EDGA-2010-05; SR-EDGX-2010-05; SR-ISE-2010-66; SR-NASDAQ-2010-079; SR-NYSE-2010-49; SR-NYSEAmex-2010-63; SR-NYSEArca-2010-61; and SR-NSX-2010-08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities and ETPs to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. See Securities Exchange Act Release No. 63497 (December 9, 2010), 75 FR 78315 (December 15, 2010) (SR-BATS-2010-037). More recently, the Exchange submitted a proposed rule change to extend the operation of the Pilot until the earlier of August 11, 2011 or the date on which a limit up / limit down mechanism to address extraordinary market volatility, if adopted, applies. Securities Exchange Act Release No. 64207 (April 6, 2011), 76 FR 20424 (April 12, 2011).

⁵ The Exchange notes that it does not currently calculate the percentage necessary for a Trading Pause to be issued, but instead relies on the primary listing market for each security to perform such calculation and disseminate information if and when a Trading Pause is in effect. Nonetheless, the Exchange supports the percentages at which Trading Pauses will trigger, which are being concurrently proposed by the primary listing markets with respect to the NMS stocks that are being added to the Pilot. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell

The proposed changes to the Pilot, if approved, would require that the text of Rule 11.8(d)(2)(D) and (E), which pertain to the pricing obligations that Market Makers⁶ are required to adhere to, be amended to ensure consistency with the percentage moves that will trigger a Trading Pause on the primary listing markets (a “Trigger Percentage”). Specifically, in order to adopt the proposed changes to the Pilot, the primary listing markets will apply different Trigger Percentages to the newly added securities, including 30% for NMS stocks priced equal to or greater than \$1 per share that are not included in the S&P 500, the Russell 1000 or the specified list of ETPs and 50% for NMS stocks priced below \$1 per share that are not included in the S&P 500, the Russell 1000 or the specified list of ETPs (“Low Priced Securities”). In order to accommodate this change, the Exchange proposes to modify the language of its quoting requirements for Market Makers, which are intended to be within the bounds of the Trigger Percentages.

As set forth in the Exchange’s current Rule, the pricing obligations applicable to quotations of Market Makers are based on the “Designated Percentage” and the “Defined Limit,” which are determined based on the applicable Trigger Percentage. Currently, the Exchange’s formula for calculating the Designated Percentage is the Trigger Percentage minus 2%. The current formula for calculating the Defined Limit is the Trigger Percentage minus 0.5%. The

1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange agrees that broader percentages to trigger a Trading Pause would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader percentage to trigger a Trading Pause would also be appropriate for leveraged ETPs. Finally, the Exchange agrees that lower-priced securities should be governed by a broader percentage prior to triggering a Trading Pause than other NMS stocks because lower-priced securities may tend to be more volatile, and price movements of lower-priced stocks equate to a higher percentage move than a similar price change for a higher-priced stock.

⁶ The term Market Maker means a Member that acts as a Market Maker on BATS pursuant to Chapter XI of the Exchange’s rules.

Exchange proposes to apply the existing formulas for calculating the Designated Percentage and Defined Limit to all NMS stocks other than Low Priced securities. Thus, there will be no change to the existing Designated Percentage of 8% and Defined Limit of 9.5% for securities included in the S&P 500, the Russell 1000 or the specified list of ETPs (or 20% and 21.5% when trading pauses are not in effect). For newly added NMS stocks priced \$1 or above, this formula will mean a Designated Percentage of 28% and a Defined Limit of 29.5%.

The Exchange proposes to add language stating that for Low Priced Securities the Designated Percentage will be 20 percentage points less than the Trigger Percentage and the Defined Limit will be 18.5 percentage points less than the Trigger Percentage. Accordingly, the Designated Percentage and Defined Limit would be 30% and 31.5%, respectively, for Low Priced Securities.

Similarly, and consistent with the rules of the primary listing markets, the Exchange proposes to state that with respect to securities included in S&P 500, the Russell 1000 or the specified list of ETPs, such products have different quotation requirements at the open and close of trading each day. Specifically, the Exchange proposes to state that with respect to such products, the quotation requirements apply with a Designated Percentage of 20% and a Defined Limit of 21.5% for times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market. For all other NMS stocks, the Designated Percentage and Defined Limit will not change for the open or the close of trading.

The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 11.8(d)(2)(D) and (E) would decrease slightly for the proposed new NMS stocks priced at \$1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on Market Maker pricing obligations and is

reasonable because it would ensure that the designated quoting percentages in 11.18 are within a narrower range than the percentages necessary to trigger a Trading Pause.

The Exchange also proposes to modify Rule 11.8(e), which describes an optional functionality that the Exchange offers to Exchange Market Makers to assist such Market Makers with maintenance of their quotations under Rule 11.8. Specifically, for Market Makers that utilize the functionality, the Exchange enters bids and offers at the Designated Percentage and cancels and replaces the bid or offer if it drifts away from the NBBO to the Defined Limit or away from the Designated Percentage towards the NBBO by a number of percentage points determined by the Exchange. If a bid or offer entered pursuant to proposed paragraph (e) is executed, the Exchange will re-enter a new bid or offer on behalf of a Market Maker. In order to reduce the operational burden on the Exchange, the Exchange proposes to use the same Designated Percentage and Defined Limit for all NMS stocks that are being added to the Pilot regardless of the price per share of such stocks. Accordingly, for purposes of its optional quotation functionality, the Exchange will use a consistent Designated Percentage of 28% and a consistent Defined Limit of 29.5% for all NMS stocks not included in S&P 500, the Russell 1000 or the specified list of ETPs. Market Makers managing their own quoting on the Exchange may still quote in accordance with the rule based on the Designated Percentage and Defined Limit established for Low Priced Securities (30% and 31.5%, respectively).

Finally, the Exchange proposes to simplify Rule 11.18 by adopting Interpretation and Policy .01, which will, in chart form, explicitly state the percentages that are applicable under the Rule for different types of securities and at different times.

2. Statutory Basis

The Exchange believes that its proposal 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.⁷ In particular, the proposal is consistent with Section 6(b)(5) of the Act,⁸ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change is also consistent with Section 11A(a)(1) of the Act⁹ in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks while adjusting the parameters of the rule for different securities in a manner that will promote uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 11.18 are within a narrower range than the percentages necessary to trigger a Trading Pause on a primary listing market.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78k-1(a)(1).

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 such 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-2011-016 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-2011-016. 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, 100 F Street, NE, Washington, DC 20549, 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 office 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 publicly available. All submissions should refer to File Number SR-BATS-2011-016 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.¹⁰

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).