

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-66065; File Nos. SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129)

December 28, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; BATS Y-Exchange, Inc.; NASDAQ OMX BX, Inc.; Chicago Board Options Exchange, Incorporated; C2 Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; The NASDAQ Stock Market LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; National Stock Exchange, Inc.; NASDAQ OMX PHLX LLC; Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Changes Relating to Trading Halts Due to Extraordinary Market Volatility

I. Introduction

On September 27, 2011, each of BATS Exchange, Inc. (“BATS”), BATS Y-Exchange, Inc. (“BYX”), NASDAQ OMX BX, Inc. (“BX”), Chicago Board Options Exchange, Incorporated (“CBOE”), C2 Options Exchange, Incorporated (“C2”), Chicago Stock Exchange, Inc. (“CHX”), EDGA Exchange, Inc. (“EDGA”), EDGX Exchange, Inc. (“EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), International Securities Exchange LLC (“ISE”), The NASDAQ Stock Market LLC (“Nasdaq”), National Stock Exchange, Inc. (“NSX”), New York Stock Exchange LLC (“NYSE”), NYSE Amex LLC (“NYSE Amex”), NYSE Arca, Inc. (“NYSE Arca”), and NASDAQ OMX PHLX LLC (“Phlx”) (collectively, the “SROs”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposed rule changes (the “SRO Proposals”) to amend certain of their respective rules relating to trading halts due to extraordinary market volatility. The SRO Proposals were published for comment in the Federal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Register on October 4, 2011.³ The Commission received seven comment letters on the SRO Proposals.⁴

On November 17, 2011, the Commission extended the time period in which to either approve the SRO Proposals, disapprove the SRO Proposals, or to institute proceedings to determine whether to disapprove the SRO Proposals, to December 30, 2011.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the SRO Proposals.

³ See Securities Exchange Act Release Nos. 65437 (September 28, 2011), 76 FR 61466 (October 4, 2011); 65428 (September 28, 2011), 76 FR 61453 (October 4, 2011); 65429 (September 28, 2011), 76 FR 61432 (October 4, 2011); 65433 (September 28, 2011), 76 FR 61453 (October 4, 2011); 65438 (September 28, 2011), 76 FR 61447 (October 4, 2011); 65426 (September 28, 2011), 76 FR 61460 (October 4, 2011); 65431 (September 28, 2011), 76 FR 61425 (May 12, 2011); 65440 (September 28, 2011), 76 FR 61444 (October 4, 2011); 65430 (September 28, 2011), 76 FR 61429 (October 4, 2011); 65425 (September 28, 2011), 76 FR 61438 (October 4, 2011); 65435 (May 6, 2011), 76 FR 61416 (October 4, 2011); 65436 (September 28, 2011), 76 FR 61450 (October 4, 2011); 65427 (September 28, 2011), 76 FR 61457 (October 4, 2011); 65432 (September 28, 2011), 76 FR 61422 (October 4, 2011); 65439 (September 28, 2011), 76 FR 61463 (October 4, 2011); 65434 (September 28, 2011), 76 FR 61419 (October 4, 2011) (collectively, the “Notices”).

⁴ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association, dated October 27, 2011 (“SIFMA Letter”); Letter to Commission, from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated October 25, 2011 (“Angel Letter”); Letter to Elizabeth M. Murphy, Secretary, Commission, from Craig S. Donohue, CME Group, Inc., dated October 25, 2011 (“CME Group Letter”); Letter to Elizabeth M. Murphy, Secretary, Commission, from Commissioner Bart Chilton, Commodity Futures Trading Commission, dated October 25, 2011 (“Commissioner Chilton Letter”); Letter to Elizabeth M. Murphy, Secretary, Commission, from Richard H. Baker, President and CEO, Managed Funds Association, dated October 25, 2011 (“MFA Letter”); Letter from Suzanne H. Shatto, dated October 20, 2011; Letter from Mark Roszak, dated October 4, 2011.

⁵ See Securities Exchange Act Release No. 65770, 76 FR 72492 (November 23, 2011).

II. Description of the Proposals

In the SRO Proposals, the exchanges and FINRA propose to revise the existing market-wide circuit breakers, which halt trading in all NMS securities in the event of extraordinary market volatility, in order to make them more meaningful in today's high-speed electronic markets. In so doing, the exchanges and FINRA took into account the events of May 6, 2010, where the markets experienced excessive volatility in a short period of time, as well as the recommendations of the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues.

The existing market-wide circuit breakers provide for specified trading halts following certain "Level 1," "Level 2," and "Level 3" market declines.⁶ The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the Dow Jones Industrial Average ("DJIA") for the month prior to the beginning of the quarter.⁷ The existing Level 1, Level 2, and Level 3 circuit breakers operate as follows:

Level 1 Halt

Before 2:00 p.m. – one hour;

At or after 2:00 p.m. but before 2:30 p.m. – 30 minutes;

At or after 2:30 p.m. – trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Before 1:00 p.m. – two hours;

At or after 1:00 p.m. but before 2:00 p.m. – one hour;

At or after 2:00 p.m. – trading shall halt and not resume for the rest of the day.

⁶ See NYSE Rule 80B.

⁷ Each percentage calculation is rounded to the nearest 50 points, and remains in effect until the next quarterly calculation.

Level 3 Halt

At any time – trading shall halt and not resume for the rest of the day.

As described in detail in the Notices, the SRO Proposals, among other things, would: (i) replace the DJIA with the S&P 500® Index (“S&P 500”) as the reference index; (ii) recalculate the values of the triggers daily instead of each calendar quarter; (iii) reduce the 10%, 20%, and 30% market decline trigger percentages to 7%, 13%, and 20%; (iv) shorten the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The proposed Level 1, Level 2, and Level 3 circuit breakers would operate as follows:

Level 1 Halt

Before 3:25 p.m. – 15 minutes;

At or after 3:25 p.m. – trading shall continue, unless there is a Level 3 halt.

Level 2 Halt

Before 3:25 p.m. – 15 minutes;

At or after 3:25 p.m. – trading shall continue, unless there is a Level 3 halt.

Level 3 Halt

At any time – trading shall halt and not resume for the rest of the day.

III. Limit Up-Limit Down Plan

Separately, there currently is pending before the Commission a proposal by the equities exchanges and FINRA to establish a new mechanism to address extraordinary market volatility in individual securities, pursuant to a national market system plan under Rule 608 of Regulation NMS to address extraordinary market volatility (the National Market System Plan to Address

Extraordinary Market Volatility, or, the “Limit Up-Limit Down Plan”).⁸ The new Limit Up-Limit Down Plan, which would replace the existing single-stock circuit breaker mechanism,⁹ would prevent trades in individual securities from occurring outside of a specified price band, and would be coupled with a trading pause mechanism to accommodate more fundamental price moves. In essence, a security would enter a “limit state” if its price moves a certain percentage – generally 5%, 10% or 20%, depending on the stock and the time of day – over a 5-minute period. If the market does not naturally exit the limit state within 15 seconds, there would be a five-minute trading pause. The Commission currently is reviewing the comments received.¹⁰

As discussed below, the Commission, in the Notices for the SRO Proposals, specifically requested comment on how the proposed changes to the market-wide circuit breakers would interact with the limit up/limit down mechanism for individual securities, if approved, and several commenters expressed views on this issue.¹¹

IV. Comment Letters

The Commission received seven comment letters on the SRO Proposals.¹² Several commenters expressed concern that the Level II circuit breaker would not apply after 3:25 p.m.¹³

⁸ See Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

⁹ See Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (order approving the current single-stock circuit breaker mechanism). The single-stock circuit breaker mechanism, which was approved as a pilot program, is currently scheduled to expire on January 31, 2012. See, e.g., Securities Exchange Act Release No. 65090 (August 10, 2011), 76 FR 50790 (August 16, 2011) (SR-NYSE-2011-40).

¹⁰ The final date for Commission action on the Limit Up-Limit Down Plan is February 29, 2012 unless the Participants consent to a further extension. See Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2011.

¹¹ See Commissioner Chilton Letter, CME Group Letter, SIFMA Letter.

¹² See supra note 4.

As explained in the Notices, the SROs adopted this approach to avoid disrupting the normal 4:00 p.m. market close. The Commission, however, specifically solicited comment on whether some provision should be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m., even if the decline is less than 20%. These commenters believed that the proposal would potentially leave the market vulnerable to a severe decline that occurs late in the trading day, and instead suggested that a Level II circuit breaker triggered at or after 3:25 p.m. halt trading for the remainder of the trading session.¹⁴

The Commission also specifically requested comment on how the proposed changes would interact with the single-stock circuit breaker pilot program or, if approved, the proposed limit up/limit down mechanism for individual securities. The Commission further asked whether the market-wide circuit breaker should be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered. One commenter believed that the market-wide circuit breaker should be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, given the potential difficulties of accurately calculating the value of the S&P 500 Index in such circumstances.¹⁵ Two other commenters also expressed concern about the interaction of market-wide circuit breakers and single-stock circuit breakers, and the impact that might have on index calculations, particularly in macro-market events.¹⁶

Two commenters also expressed views on how market centers should treat pending orders in the event a market-wide circuit breaker is triggered. One commenter believed that orders pending with a market center at the time of a Level I or Level II circuit breaker should

¹³ See CME Group Letter, Commissioner Chilton Letter, and MFA Letter.

¹⁴ Id.

¹⁵ See SIFMA Letter. SIFMA also believed it was critical to coordinate the market-wide circuit breakers with the options and futures markets.

¹⁶ See CME Group Letter and Commissioner Chilton Letter.

remain queued by the market center during the halt and be eligible for execution after the halt.¹⁷

However, in the event of a Level III circuit breaker, that commenter was of the view that all pending orders should be cancelled, since trading will cease for the remainder of the day.

Another commenter generally took the position that the SROs should not cancel pending orders during a trading halt, in order to preserve the queue priority of market participants.¹⁸

The Commission sought comment on whether a provision should be made for a closing auction in the event of a Level III circuit breaker decline. One commenter responded that allowing a closing auction under these extreme circumstances would risk greater market dislocations, and therefore was inadvisable,¹⁹ but another believed there should be a normal closing process so that, among other things, mutual fund prices are properly determined.²⁰ The Commission also sought comment on whether the primary market should have a longer period (e.g. 30 minutes) to re-open trading following a Level II circuit breaker decline. One commenter responded that trading halts should be as short as operationally practicable, and was of the view that the 15 minute trading halt remained appropriate in this circumstance.²¹ Finally, one commenter questioned whether the Level 1 circuit breaker should be narrowed from 10% to 7%.²²

¹⁷ See SIFMA Letter.

¹⁸ See CME Group Letter.

¹⁹ Id.

²⁰ See Angel Letter.

²¹ See CME Letter.

²² See Angel Letter.

V. Proceedings to Determine Whether to Disapprove SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the SRO Proposals should be disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the SRO Proposals that are discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the SRO Proposals.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Sections 6(b)(5) and 15A(b)(6) of the Act²³ require that the rules of an exchange and FINRA, respectively, be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 SRO Proposals would update the market-wide circuit breakers by, among other things, reducing the market decline percentage thresholds necessary to trigger a circuit breaker, shortening the duration of the resulting trading halts, and changing the reference index used to measure a market decline. The market-wide circuit breakers were not triggered during the severe market disruption of May 6, 2010, which led the exchanges and FINRA in consultation with Commission staff to assess whether the circuit breakers needed to be modified or updated in light

²³ 15 U.S.C. 78f(b)(5).

of today's market structure. In addition, the Joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues recommended that the SEC and CFTC review the current operation of the market-wide circuit breakers, and consider appropriate modifications.²⁴

As discussed above, there is currently pending before the Commission a proposal by the equities exchanges and FINRA to establish the Limit Up-Limit Down Plan, which would create a new mechanism to address extraordinary market volatility in individual securities. Several commenters on the SRO Proposals stressed the need to consider the SRO Proposals together with the proposed Limit Up-Limit Down Plan, given the potential interaction between the mechanisms for moderating volatility in individual securities and those for moderating volatility market-wide. In addition, commenters expressed some concerns with the details of the SRO Proposals, including whether only the Level III circuit breaker should halt trading after 3:25 p.m. and whether the market-wide circuit breakers should be triggered if a significant number of volatility moderators for individual securities are triggered.

The Commission shares the desire of the exchanges and FINRA to appropriately update the market-wide circuit breakers in light of the current market structure and the lessons learned from the events of May 6, 2010. Because of the importance of both the market-wide and individual security volatility moderators to the maintenance of fair and orderly markets and the protection of investors, however, the Commission believes the SRO Proposals should be considered together with the proposed Limit Up-Limit Down Plan, to help assure these mechanisms interact appropriately with one another, and that details of the market-wide circuit breakers are fully evaluated. Accordingly, in light of the pending proposal to establish the Limit

²⁴ 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 at 6.

Up-Limit Down Plan, and the concerns raised by commenters, the Commission believes that questions remain as to whether the SRO Proposals are consistent with the requirements of Sections 6(b)(5) and 15A(b)(6) of the Act, including whether the proposed market-wide circuit breakers would remove impediments to and perfect the mechanism of a national market system, or protect investors and the public interest.

VI. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the SRO Proposals. In particular, the Commission invites the written views of interested persons concerning whether the SRO Proposals are inconsistent with Section 6(b)(5), Section 15A(b)(6), or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁵

Interested persons are invited to submit written data, views and arguments regarding whether the SRO Proposals should be disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

Comments may be submitted by any of the following methods:

²⁵ Section 19(b) (2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 Numbers SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129 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 Numbers SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129. These file numbers 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 SRO Proposals that are filed with the Commission, and all written communications relating to the SRO Proposals 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 filings also will be available for inspection and copying at the principal office of the Exchanges and FINRA. 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 Numbers SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Elizabeth M. Murphy
Secretary

²⁶ 17 CFR 200.30-3(a)(57).