

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77679; File No. 4-631)

April 21, 2016

Joint Industry Plan; Order Approving the Tenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

I. Introduction

On February 19, 2016, Nasdaq, Inc., on behalf of the other parties<sup>1</sup> 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”)<sup>2</sup> and Rule 608 thereunder,<sup>3</sup> a proposal to amend the Plan.<sup>4</sup> The proposal represents the tenth amendment to the Plan, and reflects proposed changes unanimously approved by the Participants (“Tenth Amendment”). The proposed Tenth Amendment was published for comment in the Federal Register on February 29, 2016.<sup>5</sup> The Commission received no comment letters regarding the amendment. This order approves the Tenth

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<sup>1</sup> Nasdaq, Inc. filed on behalf of the following parties to the Plan: Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, the Nasdaq Stock Market LLC, National Stock Exchange, Inc., the New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, the “Participants”).

<sup>2</sup> 15 U.S.C. 78k-1.

<sup>3</sup> 17 CFR 242.608.

<sup>4</sup> See Letter from Paul Roland, Principal, U.S. Equities, Nasdaq, to Brent Fields, Secretary, Commission, dated February 18, 2016. (“Transmittal Letter”).

<sup>5</sup> See Securities Exchange Act Release No. 77205 (February 22, 2016), 81 FR 10315 (“Notice”).

Amendment to the Plan.

II. Description of the Proposal

In the Tenth Amendment, the Participants propose to extend the pilot period of the Plan from April 22, 2016 to April 21, 2017 and make one modification to improve the operation of the Plan. Specifically, the Participants propose to modify the definition of Opening Price<sup>6</sup> in cases where the Primary Listing Exchange opens with quotations. Currently, the Opening Price for NMS Stocks that open on the Primary Listing Exchange with quotations is defined to be the midpoint of those quotations. The Participants propose to modify the definition of Opening Price in these circumstances to be the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no such closing price exists, the last sale on the Primary Listing Exchange reported by the SIP. The Opening Price is used under the Plan to determine the first Reference Price of the day.<sup>7</sup>

III. Discussion and Commission Findings

The Commission finds that the Tenth Amendment is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the Tenth Amendment is consistent with Section 11A of the Act<sup>8</sup> and Rule 608 thereunder<sup>9</sup> in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair

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

<sup>7</sup> Section V(B)(1) of the Plan provides that the first Reference Price for a Trading Day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours.

<sup>8</sup> 15 U.S.C. 78k-1.

<sup>9</sup> 17 CFR 242.608.

and orderly markets, and that it removes impediments to, and perfects the mechanism of, a national market system.

The Participants presented data in the Transmittal Letter and the Supplemental Joint Assessment<sup>10</sup> that shows that use of the Primary Listing Exchange's midpoint of the bid and ask often results in what the Participants believe is a skewed initial Reference Price.<sup>11</sup> The Participants also presented data that showed that most Trading Pauses occurred in securities that did not trade at or near the time of a Trading Pause (i.e., those securities that opened on the midpoint of the bid and ask on the Primary Listing Exchange).<sup>12</sup> The Participants performed a back-testing analysis to determine the impact on Trading Pauses if the first Reference Price for the day was determined by using the Primary Listing Exchange's closing price instead of the midpoint of the Exchange's bid and ask.<sup>13</sup>

Based on their data, the Participants found that the majority of Trading Pauses could have been avoided if the previous day's closing price was used as the first Reference Price rather than the midpoint of the bid and ask for stocks that opened without transactions.<sup>14</sup> Therefore, the Participants recommend modifying the Plan to amend the definition of Opening Price so that the

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<sup>10</sup> On May 28, 2015, the Participants submitted a Supplemental Joint Assessment, as required under the Plan. The Supplemental Joint Assessment is available on the SEC website at <http://www.sec.gov/comments/4-631/4631-39.pdf>. Under the Plan, the Participants were required to provide the Commission with a joint assessment relating to the impact of the Plan and the calibration of the Percentage Parameters by assessing certain identified areas. See Appendix B.III.

<sup>11</sup> See Transmittal Letter, supra note 4 and Notice, supra note 5, at Chart 1, Table 9, Table 11, Table 12, and Table 13. See also Supplemental Joint Assessment Section V.

<sup>12</sup> Id. at Table 9, Table 11, Table 12, and Table 13.

<sup>13</sup> Id. at Table 10, Table 11, Table 12, and Table 13.

<sup>14</sup> See Transmittal Letter, supra note 4 and Notice, supra note 5.

first Reference Price when there is no opening transaction is the Primary Listing Exchange's previous day's closing price.

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 modify the definition of Opening Price. The Commission believes that the modification of the Opening Price definition is appropriate to potentially prevent Trading Pauses that are not indicative of extraordinary volatility.<sup>15</sup>

The Participants also propose to amend Section VIII(C) of the Plan to extend the pilot period through April 21, 2017. 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 21, 2017 because it will allow the Participants to conduct, and the Commission to consider, further analysis of data, including data related to the impact of the revised definition of Opening Price, regarding the operation of the Plan. An extension of the pilot period also will allow the Participants to finalize and file with the Commission any proposed amendments to the Plan resulting from such further analysis.

The Commission understands the Participants are conducting additional review of certain aspects of the operation of the Plan and expects that the Participants will provide additional recommendations, as necessary, relating to: (i) the harmonization of current clearly erroneous execution rules with the Plan, such that clearly erroneous execution rules could not be used to break trades occurring within the Price Bands absent a legitimate technical failure at a Self-Regulatory Organization; (ii) a review of exchange-traded products (ETPs), to determine

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<sup>15</sup> Consistent with their representations set forth in the Notice, the Commission expects the Participants to implement the amendment to the definition of Opening Price within three months of the date of this order.

whether adjustments should be made to the Plan to account for the particular trading characteristics of ETPs; (iii) a review of other issues with the operation of the Plan that may have been revealed by the events of August 24, 2015, including the impact of double-wide Price Bands during the opening period, and the advisability of coordinated reopening procedures; and (iv) potential enhancements to the categorization of securities into different tiers. An extension of the pilot period of the Plan will allow the Participants' ongoing review and analysis to take place and inform any subsequent amendments to the Plan. The Commission believes that a one-year extension of the Pilot will provide the Participants with sufficient time to analyze the impact of change to the definition of Opening Price on the Plan's operation, as well as complete analyses of the other outstanding matters described above.

For the reasons noted above, the Commission finds that the Tenth Amendment to the Plan is consistent with Section 11A of the Act<sup>16</sup> and Rule 608 thereunder.<sup>17</sup> 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.<sup>18</sup>

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act<sup>19</sup> and Rule 608

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<sup>16</sup> 15 U.S.C. 78k-1.

<sup>17</sup> 17 CFR 242.608.

<sup>18</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

<sup>19</sup> 15 U.S.C. 78k-1.

thereunder,<sup>20</sup> that the Tenth 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.<sup>21</sup>

Brent J. Fields  
Secretary

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<sup>20</sup> 17 CFR 242.608.

<sup>21</sup> 17 CFR 200.30-3(a)(29).