

- c. Tier 1 non-ETP issues < \$0.75
- d. Tier 1 non-leveraged ETPs in each of above categories
- e. Tier 1 leveraged ETPs in each of above categories
- f. Tier 2 non-ETPs in each of above categories
- g. Tier 2 non-leveraged ETPs in each of above categories
- h. Tier 2 leveraged ETPs in each of above categories
- 2. Partition by time of day
 - a. Opening (prior to 9:45 a.m. ET)
 - b. Regular (between 9:45 a.m. ET and 3:35 p.m. ET)
 - c. Closing (after 3:35 p.m. ET)
 - d. Within five minutes of a Trading Pause re-open or IPO open
- 3. Track reasons for entering a Limit State, such as:
 - a. Liquidity gap—price reverts from a Limit State Quotation and returns to trading within the Price Bands
 - b. Broken trades
 - c. Primary Listing Exchange manually declares a Trading Pause pursuant to Section (VII)(2) of the Plan
 - d. Other
- B. Determine (1), (2) and (3) for when a Trading Pause has been declared for an NMS Stock pursuant to the Plan.

II. Raw Data (All Participants, Except A–E, Which Are for the Primary Listing Exchanges Only)

- A. Record of every Straddle State
 - 1. Ticker, date, time entered, time exited, flag for ending with Limit State, flag for ending with manual override.
 - 2. Pipe delimited with field names as first record.
- B. Record of every Price Band
 - 1. Ticker, date, time at beginning of Price Band, Upper Price Band, Lower Price Band
 - 2. Pipe delimited with field names as first record
- C. Record of every Limit State
 - 1. Ticker, date, time entered, time exited, flag for halt
 - 2. Pipe delimited with field names as first record
- D. Record of every Trading Pause or halt
 - 1. Ticker, date, time entered, time exited, type of halt (i.e., regulatory halt, non-regulatory halt, Trading Pause pursuant to the Plan, other)
 - 2. Pipe delimited with field names as first record
- E. Data set or orders entered into reopening auctions during halts or Trading Pauses
 - 1. Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side
 - 2. Pipe delimited with field name as first record
- F. Data set of order events received during Limit States
- G. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.
- 1. Market/marketable sell orders arrivals and executions
 - a. Count

- b. Shares
- c. Shares executed
- 2. Market/marketable buy orders arrivals and executions
 - a. Count
 - b. Shares
 - c. Shares executed
- 3. Count arriving, volume arriving and shares executing in limit sell orders above NBBO mid-point
- 4. Count arriving, volume arriving and shares executing in limit sell orders at or below NBBO mid-point (non-marketable)
- 5. Count arriving, volume arriving and shares executing in limit buy orders at or above NBBO mid-point (non-marketable)
- 6. Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point
- 7. Count and volume arriving of limit sell orders priced at or above NBBO mid-point plus \$0.05
- 8. Count and volume arriving of limit buy orders priced at or below NBBO mid-point minus \$0.05
- 9. Count and volume of (3–8) for cancels
- 10. Include: Ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

III. At least two months prior to the end of the Pilot Period, all Participants shall provide to the SEC assessments relating to the impact of the Plan and calibration of the Percentage Parameters as follows:

- A. Assess the statistical and economic impact on liquidity of approaching Price Bands.
- B. Assess the statistical and economic impact of the Price Bands on erroneous trades.
- C. Assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands.
- D. Assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap.
- E. Evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets. (Participants that operate options exchange should also prepare such assessment reports.)
- F. Assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic.
- G. Assess whether the process for exiting a Limit State should be adjusted.
- H. Assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

[FR Doc. 2013–05635 Filed 3–11–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 14, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
An adjudicatory matter; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 7, 2013.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2013–05762 Filed 3–8–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69060]

Order Granting a Temporary Exemption Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 From the Filing Deadline Specified in Rule 613(a)(1) of the Exchange Act

March 7, 2013.

Rule 613(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ requires the Financial Industry Regulatory Authority, Inc. (“FINRA”) and the seventeen registered national securities exchanges (collectively, the “SROs”) to “jointly file on or before 270

¹ 17 CFR 242.613(a)(1).

days from the date of publication of the Adopting Release [for Rule 613 of the Exchange Act²] in the **Federal Register** a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository as required by [the rule].” The Adopting Release for Rule 613 was published in the **Federal Register** on August 1, 2012,³ thus requiring the national market system plan (the “NMS plan”) to be filed on or before April 28, 2013.⁴ On February 8, 2013, the Commission received a request from the SROs, pursuant to Rule 0–12 under the Exchange Act,⁵ that the Securities and Exchange Commission (“Commission”) grant a temporary exemption under Section 36 of the Exchange Act,⁶ from the deadline specified in Rule 613(a)(1) of the Exchange Act⁷ for submitting the NMS plan to the Commission.⁸

In the Request Letter, the SROs noted that Rule 613 requires that they include in the NMS plan “cost estimates for the proposed solution, and a discussion of the costs and benefits of alternative solutions considered but not proposed.”⁹ They also noted that Rule 613 requires that the NMS plan include a discussion of “[t]he process by which the [SROs] solicited views of their members and other appropriate parties regarding the creation, implementation, and maintenance of the consolidated audit trail, a summary of the views of such members and other parties, and how the [SROs] took such views into account in preparing the [NMS plan].”¹⁰

In order to satisfy these requirements, the SROs believe that conducting a request for proposal (“RFP”) process is necessary prior to filing an NMS plan. The SROs believe that such a process will ensure that potential alternative solutions for creating the consolidated audit trail can be presented to the SROs for their consideration, and will provide

the SROs with information necessary to prepare a detailed cost/benefit analysis as required by Rule 613. To ensure that the RFP process is effective, the SROs believe the concepts that will be contained in the RFP should be subject to public comment before the document is finalized and formally published. The SROs believe that public comment will ensure that the RFP addresses areas of concerns to the industry and the SROs, and will also provide potential bidders with information on the RFP prior to its formal publication. To this end, the SROs published an RFP concept document on December 5, 2012, and requested public feedback by January 18, 2013.¹¹

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself. The SROs believe that such a comment process is necessary in order to gather information needed to perform an effective cost/benefit analysis, including the estimated costs to broker-dealers and other market participants of building the consolidated audit trail in accord with the proposed solution, as well as to meaningfully assess and respond to the comments and draft the final NMS plan for submission to the Commission.

In the Request Letter, the SROs provided the following estimated timeline, which is based on their current expectation for conducting the RFP process and drafting the NMS plan:

- December 5, 2012: The SROs published an RFP concept document for comment
- January 18, 2013: Deadline to submit comments on the RFP concept document made publicly available (i.e., a 45-day comment period)
- February 2013: The SROs will publish the final RFP for bids
- March 2013: The SROs will solicit public comment on certain portions of the draft NMS plan that are not dependent on the RFP process and can benefit from public comment

- April 2013: Deadline for submitting bids in response to the RFP
- July 2013: The SROs will select a proposed solution after reviewing and evaluating the RFP bids
- August 2013: The SROs will solicit public comment on other specific portions of the proposed NMS plan that the SROs believe can benefit from public comment and that incorporate the RFP process and the proposed solution, including soliciting estimates on industry costs
- October 2013: Comments must be submitted on the proposed solution (i.e., a 60-day comment period)
- December 6, 2013: The SROs file the proposed NMS plan with the Commission

For the reasons set forth above, the SROs stated that a temporary exemption from the filing deadline until December 6, 2013 is “necessary to allow the SROs to conduct the thoughtful and comprehensive analysis this important regulatory initiative deserves.”¹² The SROs also stated their belief that “the timeline outlined above will lead to a significantly better and more informed process and, as a result, the proposed solution will be the result of a more meaningful and careful analysis.”¹³

Section 36 of the Exchange Act¹⁴ authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

After considering the SROs’ proposed process for developing the NMS plan, the Commission finds that it is appropriate in the public interest, and is consistent with the protection of investors, to grant the SROs a temporary exemption from the deadline for filing the NMS plan contained in Rule 613(a)(1)¹⁵ until December 6, 2013. The Commission understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things, including the

² 17 CFR 242.613.

³ Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (“Adopting Release”).

⁴ April 28, 2013, is a Sunday. Therefore, in accordance with Rule 160(a) of the Commission Rules of Practice, the deadline for filing the NMS plan is Monday, April 29, 2013. The SROs, however, had established an earlier deadline for the filing of the NMS plan of Friday, April 26, 2013.

⁵ 17 CFR 240.0–12.

⁶ 15 U.S.C. 78mm(a)(1).

⁷ 17 CFR 242.613(a)(1).

⁸ See Letter from Robert L.D. Colby, Chief Legal Officer, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated February 7, 2013 (the “Request Letter”).

⁹ See Request Letter (quoting Adopting Release, *supra* 3, at 45725).

¹⁰ See Request Letter (quoting 17 CFR 242.613(a)(1)(xi)).

¹¹ See Request Letter.

¹² See Request Letter.

¹³ *Id.*

¹⁴ 15 U.S.C. 78mm.

¹⁵ As noted above, the current deadline for submitting the NMS plan is April 29, 2013. This deadline is calculated pursuant to Rule 613(a)(1) which requires the NMS plan to be filed 270 days from the date of publication of the Adopting Release in the **Federal Register**. See note 4, *supra*.

methods for reporting the required data; a detailed estimate of the costs to plan sponsors and to members of the plan sponsors of creating, implementing, and maintaining the consolidated audit trail (including issues relating to funding of the consolidated audit trail); an analysis of the impact on competition, efficiency and capital formation of creating, implementing and maintaining the NMS plan; and a discussion of any reasonable alternative approaches that the plan sponsors considered including a description of any such alternative approach, the relative advantages and disadvantages of each such alternative, including an assessment of the alternative's costs and benefits, and the basis upon which the plan sponsors selected the approach in the NMS Plan submitted.¹⁶

Additionally, given that the planned RFP process as described in the Request Letter is expected to include multiple solicitations for public comment, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to provide the SROs with additional time. This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission. In granting the SROs' request, the Commission expects the SROs to work diligently to adhere to the milestones specified by the SROs in the Request Letter. The Commission also expects the SROs to utilize the additional time to prepare a detailed and complete NMS plan for the Commission and the public to consider.

Accordingly, *it is hereby ordered*, pursuant to Section 36 of the Exchange Act,¹⁷ that the SROs are temporarily exempted from the deadline for submitting the NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository contained in Rule 613(a)(1) until December 6, 2013.

By the Commission.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-05634 Filed 3-11-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69038; File No. SR-BATS-2013-016]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Modify the BATS Options Market Maker Obligation Rule

March 5, 2013.

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 March 1, 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 Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. 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 filed a proposal for the BATS Options Market ("BATS Options") to amend Rule 22.6(d) in connection with the upcoming operation 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").⁵ The Exchange is also proposing to amend Rule 22.6(d) to suspend the obligation of market makers registered with BATS ("Market Makers") to enter continuous bids and offers during a halt, suspension, or pause in trading of the underlying security (collectively, a "Trading Halt").

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently 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 purpose of this proposed rule change is to amend BATS Rule 22.6(d) to suspend a Market Maker's continuous quoting obligations when the underlying security is subject to a "Limit State" or "Straddle State" as defined Limit in the Up-Limit Down Plan and during a Trading Halt.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan. Under the Plan, a Limit State will be declared if the national best offer equals the lower price band and does not cross the national best bid, or the national best bid equals the upper price band and does not cross the national best offer. A Straddle State is when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility. Accordingly, when the underlying security is in a Limit State or Straddle State, there will not be a reliable price for the security to serve as a benchmark for the price of the related option. While, in theory, the liquidity provided by requiring Market Makers to continue to quote during a Limit or Straddle State could help to stabilize a volatile market, without a reliable benchmark for pricing an option, Market Makers would likely respond to the uncertainty by entering very wide

¹⁶ See Rule 613(a)(1).

¹⁷ 15 U.S.C. 78mm.