Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b–17 will not be implicated.[5]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemption shall discontinue transactions involving the Shares of the Fund under the circumstances described above and in the Letter, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05177 Filed 3–10–14; 8:45 am]

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[5] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[6] 17 CFR 200.30–3(a)(6) and (9).

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 13, 2014 at 2 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 her designee, has certified that, in her 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 matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in 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 6, 2014.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2014–05321 Filed 3–7–14; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71651; File No. SR–BATS–2014–003]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Modify the BATS Options Opening Process

March 5, 2014.

I. Introduction

On January 6, 2014, BATS Exchange, Inc. (''Exchange'' or ''BATS'') 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] a proposed rule change to modify the BATS options opening process. On January 16, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 23, 2014.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend its rules to allow the Exchange's equity

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected a typographical error contained in its original submission related to its description of how the Exchange's Rule 20.6, governing Obvious Errors, currently operates.

[4] *See* Securities Exchange Act Release No. 71327 (January 16, 2014), 79 FR 3897 (January 23, 2014) (''Notice'').

options trading platform (''BATS Options'') to accept orders and quotes in all options series, other than index options, prior to the first transaction in the underlying security on the primary listing market and during a halt, as well as to establish a process for matching such orders immediately prior to the opening of trading in such options series. According to the Exchange, BATS Options currently does not accept any orders or quotes while trading is not open in an options class, including both prior to the first transaction in the underlying security on the primary listing market and during a trading halt in an options class.[5]

The Exchange proposes to begin accepting orders and quotes in all series at 8:00 a.m. Eastern Time and immediately upon a regulatory halt,[6] and would continue to accept orders and quotes until such time as the BATS Options opening process is initiated (''Order Entry Period'').[7] Under the proposal, such orders (*i.e.,* those received prior to the opening process or during a regulatory halt) will be queued for participation in the opening process and will not be eligible for execution until the opening process occurs.[8] The Exchange proposes that limit orders queued during this time would be disseminated via the Options Price Reporting Authority (''OPRA'') as non-firm quotes and via BATS Multicast PITCH, but that market orders queued during this time would not be disseminated.[9]

During a regulatory halt, the Exchange proposes that all orders would be cancelled unless an exchange member has entered instructions not to cancel its orders,[10] which would cause such orders to queue as part of the Order Entry Period.[11] However, when trading is halted, but it is not due to a regulatory halt, the Exchange proposes that there would be no Order Entry Period, all orders would be canceled, and trading would resume upon a determination by the Exchange that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.[12]

The Exchange also proposes a method for determining the opening price [13] of an options series at the time of opening or after trading resumes following a regulatory halt. Specifically, the Exchange proposes that, where there are no contracts in a particular series that would execute at any price at the time that the Exchange would determine the opening price, the Exchange would open such options for trading without determining an opening price.[14] Where there is a price at which at least one contract would execute, the Exchange proposes that, within thirty seconds after the first listing market transaction [15] or the regulatory halt being lifted, the Exchange would determine the opening price under proposed BATS Rule 21.7(a)(1) as follows: (i) The midpoint of the national best bid (''NBB'') and the national best offer (''NBO'' and, collectively, the ''NBBO Midpoint''); [16] (ii) where there is no NBBO Midpoint at a ''Valid Price'' (as explained below), the last ''Print'' [17] in the series; or (iii) where there is neither a NBBO Midpoint nor a Print at a Valid Price, the ''Previous Close.'' [18]

The Exchange proposes that the opening price of an options series must be a Valid Price.[19] The Exchange further proposes that a NBBO Midpoint, a Print, and a Previous Close would constitute a Valid Price under proposed BATS Rule 21.7(a)(2) where: (i) There is no NBB and no NBO; (ii) there is either a NBB and no NBO or a NBO and no NBB and the price is equal to or greater than the NBB or equal to or less than the NBO; or (iii) there is both a NBB and NBO, the price is equal to or within the NBBO, and the price is less than a prescribed ''Minimum Amount'' away from the NBB or NBO for the series.[20] The Exchange proposes to establish the Minimum Amount thresholds based on the standards set forth in BATS Rule 20.6 governing Obvious Errors.[21]

Where there is no NBBO Midpoint, no Print, and no Previous Close at a Valid Price, the Exchange proposes to have the discretion, depending on the circumstances, to extend the Order Entry Period by 30 seconds or less, or open the series for trading.[22] Where the Exchange decides to open the series for trading pursuant to this discretion and there is at least one price level at which at least one contract of a limit order could be executed, the Exchange proposes to cancel all orders that are priced equal to or more aggressively than the midpoint of the most aggressively priced bid and the most aggressively priced offer.[23]

After the Exchange determines that an opening price is also a Valid Price, the Exchange proposes that orders and quotes that are priced equal to or more aggressively than the Opening Price would be matched based on price-time priority and in accordance with BATS Rule 21.8.[24] Further, under the proposal, all orders and quotes or portions thereof that are matched pursuant to the opening process would be executed at the opening price.[25] The Exchange also proposes that certain orders, or portions thereof, that are not executed during the opening process would be canceled.[26] For all other orders and quotes that have not been

[5] *Id.* According to the Exchange, BATS Options currently opens trading in options: (i) After the first transaction on the primary listing market after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan; or (ii) any time after 9:30 a.m. Eastern Time where the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts. *Id.* During a trading halt in an options class, the Exchange states that it currently cancels all orders and quotes, and trading does not resume until the Exchange determines that the conditions that led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading. *Id.*

[6] *See* proposed BATS Rule 21.7(a), defining ''Regulatory Halt'' as ''trading being halted in an option series due to the primary listing market for the applicable underlying security declaring a regulatory trading halt, suspension, or pause with respect to such security.''

[7] *See* Notice, *supra* note 4, at 3897.

[8] *Id.* The Exchange also notes that ''Immediate or Cancel'' orders (''IOCs'') or ''WAIT'' orders will not be accepted for queuing prior to completion of the opening process. *Id. See also* BATS Rule 21.1(f)(2) and (4) (defining IOC and WAIT orders).

[9] *See* Notice, *supra* note 4, at 3897.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *See* proposed BATS Rule 21.7(a)(1) (defining ''Opening Price'' as ''a single price at which a particular option series will be opened'').

[14] *See* Notice, *supra* note 4, at 3897.

[15] *See* proposed BATS Rule 21.7(a) (defining ''First Listing Market Transaction'' as ''the first transaction on the primary listing market after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan'').

[16] The Exchange proposes that, where the NBBO Midpoint would result in an opening price in a sub-penny increment, the Exchange will use the next highest non sub-penny increment as the NBBO Midpoint. *See* Notice, *supra* note 4, at 3898.

[17] *See* proposed BATS Rule 21.7(a)(1)(B) (defining ''Print'' as ''the last regular way print disseminated pursuant to the OPRA Plan after 9:30 a.m. Eastern Time'').

[18] *See* proposed BATS Rule 21.7(a)(1)(C) (defining ''Previous Close'' as ''the last regular way transaction from the previous trading day as disseminated pursuant to the OPRA Plan'').

[19] *See* proposed BATS Rule 21.7(a)(1).

[20] The prescribed Minimum Amount away thresholds would vary based on the price of the NBB. *See* proposed BATS Rule 21.7(a)(2)(C) (laying out the applicable Minimum Amount thresholds). For example, if the NBB for an option series is below $2.00, the applicable Minimum Amount threshold would be $0.25. *Id.*

[21] *See* Notice, *supra* note 4, at 3898.

[22] *Id.*

[23] *Id.* (providing an example of how this would operate).

[24] *Id.*

[25] *Id.*

[26] *See* Notice, *supra* note 4, at 3898. Under the proposal, this provision would apply to: (i) limit orders that are priced equal to or more aggressively than the opening price; and (ii) market orders. *Id.*

executed or canceled, including where no orders are matched at the opening price, the Exchange proposes that such orders will become eligible for trading on BATS Options immediately following the completion of the opening process.[27]

The Exchange also proposes to add some additional clarity to how trading will open and resume following a trading halt for index options. First, the Exchange represents that it would open index options in exactly the same manner as they open currently—at 9:30 a.m. Eastern Time.[28] Second, the Exchange proposes that, where trading in index options is halted for any reason, BATS would open such options for trading upon the determination by the Exchange that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.[29] According to the Exchange, this too is how index options open after a trading halt under the current rules,[30] and the purpose of this change is to clarify that trading in index options is not subject to the opening process, described above, under proposed BATS Rule 21.7(a).[31]

Finally, the Exchange proposes to retain discretion to deviate from its standard opening process, including adjusting the timing of the opening process in any option class, when the Exchange believes it is necessary in the interests of a fair and orderly market.[32] Currently, in the event the underlying security has not opened within a reasonable time after 9:30 a.m. Eastern Time, the Exchange shall make an inquiry to determine the cause of the delay, and the Exchange can open trading in options contracts even if the underlying security has yet to open for trading on the primary listing market for such security if the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts.[33] In addition, the Exchange may delay the commencement of trading in any class of options in the interests of a fair and orderly market.[34] Under the proposal, the Exchange could open trading in options contracts prior to the first listing market transaction and also delay the commencement of trading in any class of options, so long as it is in the interests of a fair and orderly market, and the Exchange would have discretion to manage the Opening Process in the event of unanticipated circumstances occurring around 9:30 a.m. Eastern Time or a trading halt being lifted.[35]

III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[36] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[37] which requires, among other things, that the rules of a national securities exchange be designed 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.

As described above, the Exchange proposes, among other things, to begin accepting orders and quotes for options series, other than index options, prior to the first transaction in the underlying security on the primary listing market and during certain trading halts. According to the Exchange, this will provide all Exchange members with greater control and flexibility with respect to entering orders and quotes by allowing them to enter orders and quotes beginning at 8:00 a.m. Eastern Time, rather than only after trading has opened for a particular option. Under the proposal, orders entered during the opening process or certain trading halts would queue, and all orders and quotes priced more aggressively than the opening price will be matched based on price-time priority and in accordance with existing BATS Rule 21.8. Further, all orders and quotes or portions thereof that are matched during the opening process will be executed at the opening price. The Commission notes that limit orders queued during the opening process would be disseminated via OPRA, which will contribute toward greater price discovery by providing additional information to the options market.

The Commission believes that permitting BATS to accept orders and quotes before 9:30 a.m. Eastern Time and during certain trading halts should benefit investors by providing them certainty as to when their orders and quotes can be submitted rather than having to monitor each options class individually. By offering this additional functionality to Exchange members, the Commission believes that the proposed rule change is reasonably designed to remove impediments to a free and open market. The Commission also notes that several other exchanges already permit their members to submit orders and quotes prior to 9:30 a.m. Eastern Time and during trading halts.[38]

As described above, the Exchange proposes to establish a method for determining an opening price for options, other than index options, and require that any opening price be a Valid Price. The opening price would be: (i) The NBBO Midpoint; (ii) where there is no NBBO Midpoint at a Valid Price, the Print; or (iii) where there is neither a NBBO Midpoint nor a Print at a Valid Price, the Previous Close. Accordingly, the Exchange will look to the most recently available market prices to determine the opening price, but will, in no case, permit an opening price that is not a Valid Price. To this end, the Exchange proposes to adopt Minimum Amount thresholds derived from the Exchange's obvious error rules to ensure that the opening price for an options series is, in the Exchange's view, appropriately priced. The Exchange believes that using these thresholds will prevent obvious error transactions by ensuring that the opening price will be within the Minimum Amount from either the NBB or NBO when there is both a NBB and NBO.[39] Accordingly, the Commission believes that the Exchange's proposal is reasonably designed to protect investors and the public interest by establishing an opening process that should limit an opening price to a price that should be related to the current market for an option. The Commission notes that, if the Exchange determines to open an option series for trading without determining an opening price and there is at least one price level at which at least one contract of a limit order could be executed, the Exchange would cancel all orders that are priced equal to or more aggressively than the midpoint of

[27] *See* Notice, *supra* note 4, at 3898–99.

[28] *See* Notice, *supra* note 4, at 3899.

[29] *Id.*

[30] *Id.* The Exchange also notes that the opening process for index options is not being changed by this proposed rule change. *Id.*

[31] *Id.*

[32] *Id.*

[33] *See* BATS Rule 21.7(b); Notice, *supra* note 4, at 3899.

[34] *See* BATS Rule 21.7(c); Notice, *supra* note 4, at 3899.

[35] *See* Notice, *supra* note 4, at 3899.

[36] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 15 U.S.C. 78f(b)(5).

[38] *See, e.g.,* NASDAQ Options Market Chapter VI, Section 2(a); NYSE Arca Rule 6.64; NYSE MKT Rule 952NY.

[39] *See* Notice, *supra* note 4, at 3899.

the most aggressively priced bid and the most aggressively priced offer, which should allow the Exchange to effectively open the series for trading.

The Commission further believes that the proposed opening process, including the ability to deviate from such opening process in the interests of a fair and orderly market, is consistent with the protection of investors and the public interest because it should help BATS open trading in options contracts in a fair and orderly manner. Specifically, the Commission believes that allowing members to enter orders for queuing should create a more orderly opening and facilitate price formation at the opening of trading because members will be able to enter orders and quotes in advance, rather than submitting them to the Exchange in a small amount of time. In addition, the Commission believes that the dissemination of this information prior to the opening of trading in options contracts should facilitate price discovery and create a more orderly opening process because members will have access to more information before their orders become executable.

Finally, the Commission believes that the Exchange's proposal relating to the opening, and re-opening after a trading halt, of index options is designed to protect investors and the public interest by clarifying the Exchange's rules without affecting their functionality.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change, as modified by Amendment No. 1 thereto (SR–BATS–2014–003), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05178 Filed 3–10–14; 8:45 am]

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[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71649; File No. 4–631]

Joint Industry Plan; Notice of Filing of the Seventh Amendment to the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

March 5, 2014.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder [2], notice is hereby given that, on February 24, 2014, NYSE Euronext, on behalf of New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca''), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''), filed with the Securities and Exchange Commission (the ''Commission'') a proposal to amend the Plan to Address Extraordinary Market Volatility (''Plan'').[3] The proposal represents the seventh amendment to the Plan (''Seventh Amendment''), and reflects changes unanimously approved by the Participants. The Seventh Amendment to the Plan proposes to amend the Plan to extend the pilot period of the Plan to February 20, 2015 and makes changes to Appendix B of the Plan regarding when the Participants are required to submit specified summary data to the Commission. A copy of the Plan, as proposed to be amended, is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments from interested persons on the Seventh Amendment to the Plan.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Martha Redding, Chief Counsel, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated February 21, 2014 (''Transmittal Letter'').

I. Rule 608(a) of Regulation NMS

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in ''NMS Stocks,'' as defined in Rule 600(b)(47) of Regulation NMS under the Act.[4] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.[5] These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.[6] The price bands would be calculated by the Securities Information Processors (''SIPs'' or ''Processors'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[7] Those price bands would be based on a Reference Price [8] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter [9]

[4] 17 CFR 242.600(b)(47). *See also* Section I(H) of the Plan.

[5] *See* Section V of the Plan.

[6] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan. *See* Exhibit A, *infra.*

[7] 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[8] *See* Section I(T) of the Plan.

[9] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (*i.e.,* stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (*i.e.,* all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a