demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. NASDAQ believes, however, that evidence not before the court clearly demonstrates that availability of depth data attracts order flow. For example, NASDAQ submits that in and of itself, NASDAQ's decision voluntarily to cap fees on existing products, as is the effect of an enterprise license, is evidence of market forces at work. In fact, the instant proposal creates a second enterprise license for non-professional usage of depth data to complement the existing enterprise license set forth at NASDAQ Rule 7023(a)(1)(C).

Competition among platforms has driven NASDAQ continually to improve its platform data offerings and to cater to customers' data needs. For example, NASDAQ has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. NASDAQ offers front end applications such as its "Bookviewer" to help customers utilize data. NASDAQ has created new products like TotalView Aggregate to complement TotalView ITCH and Level 2, because offering data in multiple formatting allows NASDAQ to better fit customer needs. NASDAQ offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. NASDAQ has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. NASDAQ has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for depth-of-book data have remained flat. In fact, as a percent of total customer costs, NASDAQ data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to NASDAQ's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–NASDAQ–2010–125 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–NASDAQ–2010–125. 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 Web site (*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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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 available publicly. All submissions should refer to File Number SR–NASDAQ–2010–125 and should be submitted on or before November 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26208 Filed 10–18–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(a)(ii).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63098; File No. SR–NASDAQ–2010–074]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Disapprove Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rule 4753(c) as a Six Month Pilot in 100 NASDAQ-Listed Securities

October 13, 2010.

I. Introduction

On June 18, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") 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 implement, on a six-month pilot basis, a volatility-based trading pause in 100 Nasdaq-listed securities ("Volatility Guard"). On June 25, 2010, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 15,

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

[2] 17 CFR 240.19b–4.

2010.[3] The Commission received four comment letters on the proposal.[4] Nasdaq responded to these comments on August 12, 2010.[5] The Commission subsequently extended the time period in which to either approve the proposed rule change, or to institute proceedings to determine whether to disapprove the proposed rule change, to October 13, 2010.[6] This order institutes proceedings to determine whether to disapprove the proposed rule change.

II. Description of the Proposal

Nasdaq proposes to adopt, on a pilot basis, a volatility-based trading halt for 100 Nasdaq-listed securities. Under this proposal, Nasdaq would suspend trading in a security if a trade in that security is executed at a price that exceeds a certain threshold, as measured over the preceding 30 seconds. The triggering threshold varies according to the price of the security, *i.e.,* 15% for securities with an execution price of $1.75 and under; 10% for securities over $1.75 and up to $25; 5% for securities over $25 and up to $50; and 3% for securities over $50. If the Volatility Guard were triggered, Nasdaq would suspend trading in that security for a period of 60 seconds, but would maintain all current quotes and orders during that time, and would continue to accept quotes and orders. Following this 60-second period, Nasdaq would re-open the market using its Halt Cross mechanism. According to Nasdaq, the Volatility Guard is similar in purpose to the Liquidity Replenishment Points ("LRPs") rules that currently exist on the New York Stock Exchange ("NYSE").

III. Comment Letters

Three of the four commenters expressed concerns about the effect of this proposal upon market volatility. These commenters stated that the Volatility Guard could actually increase volatility marketwide by re-directing trading in a security to other potentially less liquid venues once trading in that security had been halted on Nasdaq.[7] One commenter argued that this proposal, coupled with the LRPs currently in effect on the NYSE, would result in disparate market approaches towards dampening volatility that may create confusion among market participants, particularly in times of market stress, and exacerbate market volatility.[8]

The fourth commenter, however, supported Nasdaq's "right to design the controls it believes are best for trading on its market." [9] This commenter stated that the national market system was designed to encourage competitive distinctions such as Nasdaq's Volatility Guard and NYSE's LRPs.[10] According to this commenter, both the Nasdaq proposal and the NYSE LRPs "provide certainty and predictability of operation," and permit those markets to pursue strategies where the quality of price need not always defer to speed of execution.[11]

In its response, Nasdaq rejected the argument that the proposed Volatility Guard would exacerbate market volatility.[12] Nasdaq stated that it specifically designed the Volatility Guard to work within the parameters of the recently adopted single-stock circuit breakers, and to avoid the potential for conflicting standards between the two mechanisms.[13] Nasdaq also asserted that there is no evidence that the Volatility Guard would increase volatility in a particular security; rather, Nasdaq stated that the Volatility Guard would actually keep aberrant volatility on Nasdaq from spreading to other markets.[14]

Nasdaq also argued that the proposed Volatility Guard differed significantly from the NYSE LRPs, and that criticizing the Volatility Guard by comparing it to the LRPs was misleading. Nasdaq stated that the Volatility Guard, unlike the LRPs, would be based on clear and predictable criteria that would trigger a pause only in the event of a significant imbalance.[15] Accordingly, Nasdaq did not believe it appropriate to make a generic assertion that all market-based single-stock circuit breakers are detrimental.[16]

Finally, Nasdaq stated that it was employing prudent precautions in implementing the Volatility Guard. In particular, Nasdaq would implement the Volatility Guard as a pilot, limited in time and scope, during which time the Volatility Guard could be adjusted as needed. Nasdaq would also provide data to the Commission during the pilot period about the efficiency and effect of the Volatility Guard.[17]

IV. Proceedings To Determine Whether To Disapprove SR–NASDAQ–2010–074 and Grounds for Disapproval Under Consideration

Nasdaq's proposal is presented by the Exchange as an effort to protect Nasdaq-listed securities and Nasdaq market participants from aberrant volatility, such as that witnessed on May 6, 2010. As noted above, however, several commenters argued that individual exchange-specific mechanisms to moderate volatility may in fact exacerbate the volatility of the market overall, create confusion, and complicate the operation of the market-wide single stock circuit breakers.

Although the events of May 6, 2010 provide but one example of the effect of an individual exchange volatility moderator, the Report of the Staff of the Commodity Futures Trading Commission and the Commission (the "May 6 Staff Report") [18] did not find that NYSE LRPs caused or created the broad-based liquidity crisis on that day.[19] However, the May 6 Staff Report noted, among other things, that there were a few LRP events affecting certain stocks in which available liquidity on the NYSE may have been sufficient to absorb some of the selling pressure felt by other markets.[20] In addition, there were reports from market participants that the increasing number of LRPs on May 6 played into their decisions to reduce liquidity, pause trading, or withdraw from the markets.[21] More

[3] *See* Securities Exchange Act Release No. 62468 (July 7, 2010), 75 FR 41258.

[4] *See* Letter from Joe Ratterman, Chairman and Chief Executive Officer, BATS Global Markets, Inc., to Hon. Mary Schapiro, Chairman, Commission, dated July 1, 2010 ("BATS Letter"); Letter from Jose Marques, Managing Director, Deutsche Bank Securities Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 21, 2010 ("Deutsche Bank Letter"); Letter from Janet M. Kissane, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth Murphy, Secretary, Commission, dated August 3, 2010 ("NYSE Letter"); Letter from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated June 25, 2010 ("SIFMA Letter").

[5] *See* Letter from T. Sean Bennett, Assistant General Counsel, Nasdaq, to Elizabeth M. Murphy, Secretary, Commission ("Nasdaq response").

[6] *See* Securities Exchange Act Release No. 62740 (August 18, 2010), 75 FR 52049 (August 24, 2010).

[7] *See* BATS Letter at 2; Deutsche Bank Letter at 4; SIFMA Letter at 3.

[8] *See* Deutsche Bank Letter at 4.

[9] *See* NYSE Letter at 2. In its comment letter, NYSE also addressed what it perceived as Nasdaq's inaccurate description of the LRPs. NYSE provided additional detail about the LRPs, the role of the LRPs during the events of May 6, 2010, and the interaction between LRPs and the recently approved single-stock circuit breakers.

[10] *Id.*

[11] *Id.* at 3–4.

[12] Nasdaq response at 2.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 3.

[16] *Id.*

[17] *Id.*

[18] *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.

[19] *Id.* at 70.

[20] *Id.* Specifically, the May 6 Staff Report notes that there were 19 LRP events affecting 12 stocks in which available liquidity within 500 basis points of the national best bid or offer may have been able to absorb sell pressure.

[21] *Id.* at 70–71.

broadly, the Commission notes that it is not yet clear whether the market-wide single-stock circuit breakers, as they may be expanded or adjusted, are likely to interact with individual exchange volatility moderators such as the NYSE LRPs or, if approved, Nasdaq's Volatility Guard, in a positive, neutral or negative way.

The Commission, therefore, is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be disapproved. Institution of disapproval proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of disapproval proceedings, however, does not indicate that the Commission has formulated 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 comment on the proposed rule change.

The section of the Act applicable to the proposed rule change that provides the grounds for disapproval under consideration is Section 6(b)(5),[22] which requires that the rules of an exchange 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. Specifically, the Commission believes the proposal raises issues as to whether the Volatility Guard, by halting trading on Nasdaq when the price of a security moves quickly over a short period of time, will exacerbate the volatility of trading in that security on the other exchanges and over-the-counter trading centers that remain open. In addition, because the thresholds for triggering the Volatility Guard, and the length of the trading halt that results, differ from those of the recently approved, market-wide single-stock circuit breakers, the Commission believes the proposal raises issues as to whether the operation of the Volatility Guard will interfere with, or otherwise limit the effectiveness of, the circuit breakers, the goal of which is to prevent potentially destabilizing price volatility across the U.S. securities markets.[23]

V. Procedure: Request for Written 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 proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with the Section 6(b)(5) or any other provision of the Act, or the rules and regulations 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.[24]

Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be disapproved by December 3, 2010. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 20, 2010.

The Commission specifically reiterates its request for comment on the following items:

- A stated purpose of the proposal is to protect Nasdaq-listed securities and market participants from "aberrant" volatility, such as that which occurred on May 6, 2010 and may be caused by operational or structural factors beyond the control of issuers and individual markets. To what extent do the price changes that would trigger a trading halt under the proposal indicate the potential existence of "aberrant" volatility, as opposed to the normal operation of the markets? If these price changes indicate potentially "aberrant" volatility, to what extent will the proposal address such volatility in a manner appropriate and consistent with the purposes of the Act?
- Will a trading halt at Nasdaq under the proposal restrict liquidity or increase volatility in the affected stock, since other markets can continue to trade the stock and may not have comparable volatility halts?
- In what respects are the consequences of this proposal likely to be similar to, or different from, the effects of other exchange-specific mechanisms that currently restrict trading on the relevant exchange under certain circumstances?
- More generally, to what extent is it appropriate for the various exchanges to adopt different and potentially inconsistent approaches to trading pauses or restrictions that might affect the same stock?
- To what extent does the answer change based on whether the affected stock is already subject to a market-wide single-stock circuit breaker that applies consistently across all trading venues?

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–NASDAQ–2010–074 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–074. 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 Web site (*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 Web site 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 a.m. and 3 p.m. Copies of such filing

[22] 15 U.S.C. 78f(b)(5).

[23] In 2008, the Commission approved a similar Nasdaq proposal to establish a volatility-based trading pause for a one-year pilot period. *See* Securities Exchange Act Release No. 58386 (August 19, 2008), 73 FR 50380 (August 26, 2008) (SR–NASDAQ–2007–067). Nasdaq never implemented that pilot. The initial proposal was, however, considered and approved by the Commission before the events of May 6, 2010, at which time questions were raised about the market-wide impact of individual exchange volatility moderators in times of market stress. In addition, as noted above, there are questions about the way in which the newly-implemented single-stock circuit breakers, as they may be expanded or adjusted, will interact with exchange-specific volatility moderators.

[24] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 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 Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

also will be available for inspection and copying at the principal office of Nasdaq. 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–NASDAQ–2010–074 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26215 Filed 10–18–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63090; File No. SR–BATS–2010–027]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. To Amend BATS Rule 21.9, Entitled "Order Routing"

October 13, 2010.

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 October 4, 2010, 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 Act[3] 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, on behalf of the BATS Options Market ("BATS Options"), proposes to amend BATS Rule 21.9, entitled "Order Execution," to modify the existing general description of Exchange routing functionality and to describe available routing strategies in greater detail.

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, at the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

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 amend Rule 21.9, which describes its order routing processes, to modify the existing general description of Exchange routing functionality and to describe available routing strategies in greater detail. Also, subject to User instructions, the Exchange currently allows orders that have been routed and then posted to the Exchange's order book to be re-routed if the order is subsequently locked or crossed by another options exchange ("RECYCLE Option"). The Exchange proposes to add a reference to the "RECYCLE Option" in its Rule, consistent with the general goal of the proposed changes to align the routing strategies offered by the Exchange with the rule text by providing additional specificity. The Exchange also wishes to make clear that, unless otherwise specified, the RECYCLE Option may be combined with any of the System routing strategies specified in Rule 21.9.

The Exchange is also amending Rule 21.9 to include a definition of "System routing table," defined as the proprietary process for determining the specific options exchanges to which the Exchange System routes orders and the order in which it routes them. The definition reflects the fact that the Exchange, like other options exchanges, maintains different routing tables for different routing strategies and modifies them on a regular basis to reflect assessments about the destination markets. Such assessments consider factors such as a destination's latency, fill rates, reliability, and cost. Accordingly, the definition specifies that the Exchange reserves the right to maintain a different routing table for different routing strategies and to modify routing tables at any time without notice.

Although the current rule language for Exchange routing strategies describes the available variations of strategies in general terms, the Exchange believes that understanding of these strategies would be enhanced by describing the different versions as separately named routing strategies.

Below is a description of the various routing strategies proposed pursuant to new paragraph (a)(2) of Rule 21.9.

- CYCLE. CYCLE is a routing strategy offered by the Exchange under which an order checks the System for available shares and then is sent sequentially to destinations on the System routing table for the full remaining size of such order.
- Parallel D. Parallel D is a routing strategy offered by the Exchange under which an order checks the System for available shares and then is sent to destinations on the System routing table. The System may route to multiple destinations at a single price level simultaneously through Parallel D routing.
- Parallel 2D. Parallel 2D is a routing strategy offered by the Exchange under which an order checks the System for available shares and then is sent to destinations on the System routing table. The System may route to multiple destinations and at multiple price levels simultaneously through Parallel 2D routing.
- Parallel T. Parallel T is a routing strategy offered by the Exchange under which an order checks the System for available displayed shares and then is sent only to Protected Quotations and only for displayed size. The System may route to multiple destinations and at multiple price levels simultaneously through Parallel T routing.
- "Destination Specific Orders" and "Directed ISOs" are routed orders described in Rule 21.1.

In addition to the changes described above, the Exchange is proposing additional modifications to paragraph (a)(1) of Rule 21.9 to further align Rule 21.9 with the corollary routing rule applicable to the Exchange's equity securities platform.

2. Statutory Basis

The rule change proposed in this submission is consistent with the

[25] 17 CFR 200.30–3(a)(57).

[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).