

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²⁴

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)²⁵ of the Act to determine whether the proposed rule change 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 email to rule-comments@sec.gov. Please include File Number SR-BX-2022-007 on the subject line.

the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78s(b)(2)(B).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2022-007. This file number should be included on the subject line if email 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 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, 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 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2022-007 and should be submitted on or before May 10, 2022.

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

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94710; File No. SR-FINRA-2022-010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in FINRA Rule 6121.02 (Market-Wide Circuit Breakers in NMS Stocks)

April 13, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 13, 2022, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers in FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks).

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 200.30-3(a)(12).

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 16, 2022, the Commission approved the proposal of the New York Stock Exchange LLC ("NYSE") to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers ("MWCB") in NYSE Rule 7.12.⁴ FINRA now proposes to adopt the MWCB pilot program as permanent in FINRA Rule 6121.02.

The Pilot Rules

The MWCB rules, including FINRA's Rule 6121.02, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the "Pilot Rules," *i.e.*, Rule 6121.02 (a)–(c)).⁵ The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index ("SPX").⁶ Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior

day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "LULD Plan"),⁷ including any extensions to the pilot period for the LULD Plan.⁸ In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁹ In light of the proposal to make the LULD Plan permanent, FINRA amended Rule 6121.02 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.¹⁰ FINRA then filed to extend the pilot to the close of business on October 18, 2020,¹¹ October 18, 2021,¹² March 18, 2022,¹³ and April 18, 2022.¹⁴

⁷ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

⁸ See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (Order Approving File No. SR-FINRA-2011-054); and 68778 (January 31, 2013), 78 FR 8668 (February 6, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-011).

⁹ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan To Address Extraordinary Market Volatility).

¹⁰ See Securities Exchange Act Release No. 85547 (April 8, 2019), 84 FR 14981 (April 12, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-010).

¹¹ See Securities Exchange Act Release No. 87078 (September 24, 2019), 84 FR 51669 (September 30, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-023).

¹² See Securities Exchange Act Release No. 90160 (October 13, 2020), 85 FR 67072 (October 21, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-033).

¹³ See Securities Exchange Act Release No. 93300 (October 13, 2021), 86 FR 57867 (October 19, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-027).

¹⁴ See Securities Exchange Act Release No. 94428 (March 16, 2022), 87 FR 16265 (March 22, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-005).

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID-19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB "Working Group" composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the "Study") to the Commission.¹⁵ The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including

¹⁵ See *Report of the Market-Wide Circuit Breaker ("MWCB") Working Group Regarding the March 2020 MWCB Events*, submitted March 31, 2021 (the "Study"), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.

⁴ See Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (Order Approving File No. SR-NYSE-2021-40). The proposed rule change would also make two non-substantive, technical changes. First, the proposed rule change would update the citation in Rule 6121 for the definition of "NMS stock" under Regulation NMS from Rule 600(b)(47) to Rule 600(b)(55) to reflect recent reorganization of the defined terms in Rule 600 of Regulation NMS. Second, consistent with FINRA rulebook style, the proposed rule change would change the reference to the "Securities and Exchange Commission" in Rule 6121 to the "SEC."

⁵ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (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) ("Pilot Rules Approval Order").

⁶ The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.*, NYSE Arca Rule 6.65-O(d)(4).

that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.¹⁶

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.¹⁷ On March 16, 2022, the Commission approved NYSE's proposal.¹⁸

Consistent with the Commission's approval of NYSE's proposal, FINRA now proposes that paragraphs (a) through (c) of Rule 6121.02 be made permanent. To accomplish this, FINRA proposes to remove the text of existing paragraph (d) of Rule 6121.02, which currently provides that the provisions of Rule 6121.02 shall be in effect during a pilot period that expires at the close of business on April 18, 2022. FINRA does not propose any changes to paragraphs (a) through (c) of Rule 6121.02.

Consistent with the Commission's approval of NYSE's proposal, FINRA proposes to add new paragraphs (d), (e), and (f) to Rule 6121.02, as follows:

(d) Market-Wide Circuit Breaker ("MWCB") Testing.

(1) FINRA will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to Rule 4380 (Mandatory Participation in FINRA BC/DR Testing Under Regulation SCI) with respect to a FINRA Trade Reporting Facility ("TRF") or the Alternative Display Facility ("ADF") to participate in FINRA's periodic, scheduled testing of their business continuity and disaster recovery ("BC/DR") plans are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors ("SIPs");

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send quotes, trades or both, as applicable, to the facility or facilities for

which the member has been designated pursuant to Rule 4380 following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that a member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (d)(1)(A) through (D) above, its attestation should notify FINRA which messages it was unable to process and, if known, why.

(3) Members not designated pursuant to Rule 4380 are permitted to participate in any MWCB test.

(e) In the event that a MWCB is triggered following a Level 1, Level 2, or Level 3 Market Decline, FINRA, together with other SROs and industry representatives (the "MWCB Working Group"), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the SEC within six months of the event.

(f) In the event that there is (1) a Market Decline of more than five percent, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, FINRA, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to FINRA Rule 6121.02. If the MWCB Working Group recommends that a modification should be made to FINRA Rule 6121.02, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the SEC.

The MWCB testing requirement that FINRA is proposing to add as the new text of paragraph (d) of Rule 6121.02 is consistent with the MWCB testing obligation adopted by the exchanges (e.g., NYSE Rule 7.12(e)) that requires all designated Regulation SCI firms to participate in at least one MWCB test each year. However, the language of proposed Rule 6121.02(d) has been modified from the language of NYSE Rule 7.12(e) in two regards to account for FINRA's unique role in the equity markets, as follows.

First, FINRA's testing requirement would apply on a facility-by-facility basis. Like the exchanges, Regulation SCI requires that FINRA designate firms that must participate in the testing of the firm's business continuity and disaster recovery BC/DR plans. To comply with this Regulation SCI requirement, FINRA adopted Rule 4380, which authorizes FINRA to designate member firms that must participate in annual BC/DR testing according to

established criteria designed to ensure participation by firms FINRA reasonably determines are, taken as a whole, the minimum necessary for maintaining fair and orderly markets in the event of the activation of its BC/DR plan. As summarized in *Regulatory Notice* 19–15,¹⁹ FINRA applies specified criteria to designate firms under Rule 4380 on a facility-by-facility basis, including designation of participants of the TRFs²⁰ and the ADF.²¹ As the TRFs and ADFs are the FINRA facilities relevant to quoting and trading NMS stocks, FINRA believes that firms designated under Rule 4380 with respect to any TRF or the ADF should be required to participate in annual MWCB testing.²² Therefore, in line with the exchanges' MWCB testing rule, paragraph (d)(1) of Rule 6121.02 would provide that members designated pursuant to Rule 4380 for BC/DR testing with respect to a TRF or the ADF are required to participate in at least one industry-wide MWCB test each year.

Second, consistent with the exchanges' rules, such designated members would be required to verify their participation in the annual MWCB test by attesting that they are able to or have attempted to undertake four specified actions related to operation of MWCB halts. The first three of these actions, set forth in paragraphs (d)(1)(A) through (C) of proposed Rule 6121.02, would be identical to the exchanges' testing rules and would require that such members attest that they are able to or have attempted to: (A) Receive and process MWCB halt messages from the SIPs; (B) receive and process resume messages from the SIPs following a

¹⁹ See *Regulatory Notice* 19–15 (April 19, 2019) ("Designation Notice").

²⁰ The TRFs provide FINRA members with a mechanism to report over-the-counter ("OTC") transactions in NMS stocks. There are currently three active TRFs: (1) FINRA/Nasdaq TRF Carteret, (2) FINRA/Nasdaq TRF Chicago and (3) FINRA/NYSE TRF. While each TRF is operated by an affiliate of a registered national securities exchange, each TRF is a FINRA facility and subject to FINRA's oversight.

²¹ The ADF is a display-only facility operated by FINRA that provides FINRA members with a mechanism to display quotations and report OTC transactions in NMS stocks.

²² For the TRFs, FINRA will designate those TRF participants that account for five percent or more of the total number of trades reported to the TRF over the six-month period immediately preceding designation, provided that the cumulative trade volume represented by designated firms amounts to at least 50 percent of all trade volume reported to the TRF during the applicable six-month period. Trade volume for purposes of Rule 4380 is separately calculated for each TRF. For the ADF, there currently are not any active participants. If the ADF becomes active, FINRA will then study the system's activity to establish appropriate criteria for member designation. See *Designation Notice*, *supra* note 19, at 2.

¹⁶ See the Study, *supra* note 15, at 46.

¹⁷ See Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) ((Notice of Filing File No. SR–NYSE–2021–40)).

¹⁸ See *supra* note 4.

MWCB halt; and (C) receive and process market data from the SIPs relevant to MWCB halts. The fourth element specified in the exchanges' rules requires that designated member organizations attest that they are able to or have attempted to send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior. The TRFs and the ADF are facilities for reporting OTC transactions in NMS stocks and, in the case of the ADF, displaying quotations in NMS stocks. Therefore, FINRA is proposing a modified requirement in paragraph (d)(1)(D) for designated members to attest that they are able to or have attempted to send quotes, trades or both, as applicable, to the facility or facilities for which they have been designated pursuant to Rule 4380 in a manner consistent with their usual trading behavior.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²³ which requires, among other things, that FINRA rules must be designed 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 Pilot Rules set out in Rule 6121.02 (a) through (c) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided FINRA, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and FINRA's own analysis of those events, FINRA believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, FINRA believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. FINRA believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, FINRA believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

FINRA further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, FINRA concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. FINRA believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, FINRA observes that, while quote volatility was generally higher on the four days in

March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, FINRA concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, FINRA believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

FINRA believes that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, FINRA considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. FINRA believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

FINRA believes that proposed new paragraph (d) regarding MWCB testing is designed 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 Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. FINRA believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. FINRA further believes that

²³ 15 U.S.C. 78o-3(b)(6).

requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. FINRA would preserve such attestations pursuant to its obligations to retain books and records of FINRA.²⁴

FINRA believes that proposed paragraph (e) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule 6121.02 and prepare a report of its analysis and recommendations would permit FINRA, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 6121.02 in the public interest. Preparation of such a report within six months of the event would permit FINRA, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

FINRA believes that proposed paragraph (f) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it would recommend that Rule 6121.02 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 6121.02, the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, FINRA believes that the proposed rule change is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. FINRA believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, FINRA understands that the other SROs have or will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶

A proposed rule change filed under Rule 19b-4(f)(6)²⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative

delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²⁹

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 email to rule-comments@sec.gov. Please include File Number SR-FINRA-2022-010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-FINRA-2022-010. This file number should be included on the subject line if email 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 proposed rule change that are filed with the Commission, and all written

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ See 17 CFR 240.17a-1.

²⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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, 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 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2022-010 and should be submitted on or before May 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94713; File No. SR-NASDAQ-2022-031]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make the Market Wide Circuit Breaker Pilot a Permanent Program

April 13, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 12, 2022, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. 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 proposes to adopt on a permanent basis the pilot program for market-wide circuit breakers in Equity 4, Rule 4121.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 16, 2022, the Commission approved the proposal of the New York Stock Exchange ("NYSE") to adopt on a permanent basis the pilot program for market-wide circuit breakers ("MWCB") in NYSE Rule 7.12.³ The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Equity 4, Rule 4121.

Rules Overview

The MWCB rules, including the Exchange's Rule 4121 under Equity 4, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equities exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the "Pilot

Rules," *i.e.*, Equity 4, Rule 4121(a)-(c) and (f)).⁴ The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index ("SPX").⁵ Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "LULD Plan"),⁶ including any extensions to the pilot period for the LULD Plan.⁷ In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁸ In conjunction with the proposal to make the LULD Plan permanent, the Exchange amended Equity 4, Rule 4121 to untie the Pilot Rules' effectiveness from that of the LULD Plan and to extend the Pilot Rules' effectiveness to the close of

⁴ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (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) ("Pilot Rules Approval Order").

⁵ The rules of the equity options exchanges similarly provide for a halt in trading if the cash equities exchanges invoke a MWCB Halt. *See, e.g.*, Options 3, Section 9(e).

⁶ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

⁷ See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-NASDAQ-2011-131) (Approval Order); and 68786 (January 31, 2013), 78 FR 8666 (February 6, 2013) (SR-NASDAQ-2013-021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

⁸ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 94441 (March 16, 2022) (SR-NYSE-2021-40).