

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-NYSECHX-2022-04 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-NYSECHX-2022-04. 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-NYSECHX-2022-04 and should be submitted on or before April 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022-07185 Filed 4-5-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94567; File No. SR-NYSECHX-2022-04]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers

March 31, 2022.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the "Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on March 30, 2022, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Rule 7.12. The proposed rule change is available on the Exchange's website at www.nyse.com, 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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

of the most significant parts of such statements.

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

1. Purpose

On March 16, 2022, the Commission approved the proposal of the Exchange's affiliate, 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 The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Rule 7.12.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 7.12, 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 7.12(a)-(d)).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

⁴ See Securities Exchange Act Release No. 94441 (March 16, 2022) (SR-NYSE-2021-40).

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).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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, the Exchange amended Rule 7.12 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 The Exchange 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

The MWCBS Working Group Study

Beginning in February 2020, at the outset of the COVID-19 pandemic, the markets experienced increased volatility, culminating in four MWCBS 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 MWCBS “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 MWCBS 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 MWCBS system. In the Study, the Working Group concluded: (1) The MWCBS mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCBS 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 MWCBS 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 MWCBS 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 MWCBS Working Group also made several recommendations, including 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 MWCBS test each year and to verify their participation via attestation.¹⁶

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, the Exchange’s affiliate, 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, the Exchange now proposes that the Pilot Rules (*i.e.*, paragraphs (a)–(d) of Rule 7.12) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 7.12, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d) of the Rule.

Consistent with the Commission’s approval of NYSE’s proposal, the Exchange proposes to add new paragraphs (e), (f), and (g) to Rule 7.12, as follows:

(e) Market-Wide Circuit Breaker (“MWCBS”) Testing.

1. The Exchange will participate in all industry-wide tests of the MWCBS mechanism. ETP Holders designated pursuant to paragraph (a) of Rule 2.13 to participate in Exchange Back-up Systems and Mandatory Testing are required to participate in at least one industry-wide MWCBS 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 MWCBS halt messages from the securities information processors (“SIPs”);

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

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

(D) send orders following a Level 1 or Level 2 MWCBS halt in a manner consistent with their usual trading behavior.

2. To the extent that an ETP Holder participating in a MWCBS test is unable to receive and process any of the messages identified in paragraph (e)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

3. ETP Holders not designated pursuant to standards established in paragraph (a) of Rule 2.13 are permitted to participate in any MWCBS test.

(f) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the “MWCBS Working Group”), will review such event. The MWCBS Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(g) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCBS Halt, the Exchange, together with the MWCBS Working

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) (SR–NSX–2011–11) (Approval Order); and 68779 (January 31, 2013), 78 FR 8638 (February 6, 2013) (SR–NSX–2013–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of Rule 11.20A).

⁹ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

¹⁰ See Securities Exchange Act Release No. 85572 (April 9, 2019), 84 FR 15257 (April 15, 2019) (SR–NYSENAT–2019–08).

¹¹ See Securities Exchange Act Release No. 87077 (September 24, 2019), 84 FR 51671 (September 30, 2019) (SR–NYSENAT–2019–21).

¹² See Securities Exchange Act Release No. 90133 (October 8, 2020), 85 FR 65121 (October 14, 2020) (SR–NYSENAT–2020–33).

¹³ See Securities Exchange Act Release No. 93232 (October 1, 2021), 86 FR 55669 (October 6, 2021) (SR–NYSENAT–2021–19).

¹⁴ See Securities Exchange Act Release No. Release No. 94418 (March 15, 2022), 87 FR 16043 (March 21, 2022) (SR–NYSENAT–2022–02).

¹⁵ See *Report of the Market-Wide Circuit Breaker (“MWCBS”) Working Group Regarding the March 2020 MWCBS 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.

¹⁶ See *id.* at 46.

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

¹⁸ See *supra* note 4.

Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it 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 Pilot Rules set out in Rule 7.12(a)–(d) 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 the Exchange, 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 the Exchange's own analysis of those events, the Exchange 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, the Exchange 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. The Exchange 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, the Exchange 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.

The Exchange 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, the Exchange 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. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange 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, the Exchange 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, the Exchange 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.

The Exchange 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, the Exchange 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. The Exchange 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.

The Exchange believes that proposed paragraph (e) 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. The Exchange 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. The Exchange further believes that 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. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.²¹

The Exchange 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

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See 17 CFR 240.17a-1.

review any halt triggered under Rule 7.12 and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 7.12 in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWC Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (g) 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 MWC 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 MWC Halt would allow the MWC Working Group to identify situations where it recommends that Rule 7.12 be modified in the public interest. In such situations where the MWC Working Group recommends that a modification should be made to Rule 7.12, the MWC 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, the Exchange believes that the proposed change is consistent with the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWC Pilot Rules for the protection of the markets. The Exchange believes that making the current MWC 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 MWC 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, the Exchange understands that the other SROs 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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²² and Rule 19b-4(f)(6) thereunder.²³ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁵ 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 MWC 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.²⁶

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

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)²⁷ 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-NYSENAT-2022-04 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-NYSENAT-2022-04. 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

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁷ 15 U.S.C. 78s(b)(2)(B).

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-NYSEARCA-2022-04 and should be submitted on or before April 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-07186 Filed 4-5-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94571; File No. SR-CboeBZX-2021-051]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 31, 2022.

I. Introduction

On July 20, 2021, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the ARK 21Shares Bitcoin ETF (“Trust”) under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on August 6, 2021.³

On September 15, 2021, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute

proceedings to determine whether to disapprove the proposed rule change.⁵ On November 2, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On December 9, 2021, the Exchange filed Amendment No. 1, which amended and replaced the proposed rule change in its entirety, and on December 17, 2021, the Commission published notice of Amendment No. 1 to the proposed rule change.⁸ On January 25, 2022, the Commission designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.⁹

This order disapproves the proposed rule change, as modified by Amendment No. 1. The Commission concludes that BZX has not met its burden under the Exchange Act and the Commission’s Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and in particular, the requirement that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”¹⁰

When considering whether BZX’s proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices, the Commission applies the same standard used in its orders considering previous proposals to list bitcoin¹¹-based commodity trusts and bitcoin-based trust issued receipts.¹² As the

Commission has explained, an exchange that lists bitcoin-based exchange-traded products (“ETPs”) can meet its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size

8.201-E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 88284 (Feb. 26, 2020), 85 FR 12595 (Mar. 3, 2020) (SR-NYSEArca-2019-39) (“USBT Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR-CboeBZX-2021-024) (“WisdomTree Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Kryptoin Bitcoin ETF Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR-CboeBZX-2021-029) (“Kryptoin Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 93859 (Dec. 22, 2021), 86 FR 74156 (Dec. 29, 2021) (SR-NYSEArca-2021-31) (“Valkyrie Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 94006 (Jan. 20, 2022), 87 FR 3869 (Jan. 25, 2022) (SR-NYSEArca-2021-37) (“Skybridge Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94080 (Jan. 27, 2022), 87 FR 5527 (Feb. 1, 2022) (SR-CboeBZX-2021-039) (“Wise Origin Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94395 (Mar. 10, 2022), 87 FR 14932 (Mar. 16, 2022) (SR-NYSEArca-2021-57) (“NYDIG Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94396 (Mar. 10, 2022), 87 FR 14912 (Mar. 16, 2022) (SR-CboeBZX-2021-052) (“Global X Order”). See also Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (Apr. 3, 2017) (SR-NYSEArca-2016-101) (“SolidX Order”). The Commission also notes that orders were issued by delegated authority on the following matters: Order Disapproving a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR-NYSEArca-2017-139) (“ProShares Order”); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR-CboeBZX-2018-001) (“GraniteShares Order”); Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64539 (Nov. 18, 2021) (SR-CboeBZX-2021-019) (“VanEck Order”).

²⁸ 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. 92543 (Aug. 2, 2021), 86 FR 43289. Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-cboebzx-2021-051/sr-cboebzx2021051.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 92989, 86 FR 52530 (Sept. 21, 2021).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 93510, 86 FR 61820 (Nov. 8, 2021).

⁸ See Securities Exchange Act Release No. 93822, 86 FR 73360 (Dec. 27, 2021). Amendment No. 1 to the proposed rule change can be found at: <https://www.sec.gov/rules/sro/cboebzx/2021/34-93822.pdf>.

⁹ See Securities Exchange Act Release No. 94055, 87 FR 4980 (Jan. 31, 2022).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the “bitcoin blockchain.” The bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. See, e.g., Amendment No. 1, 86 FR at 73362.

¹² See Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR-BatsBZX-2016-30) (“Winklevoss Order”); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule