

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-MIAX-2020-32, and should be submitted on or before November 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34049; File No. 812-15159]

### Snowflake, Inc.

October 9, 2020.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of application for an order under Section 3(b)(2) of the Investment Company Act of 1940 ("Act").

*Applicant:* Snowflake, Inc. ("Snowflake").

*Summary of Application:* Applicant seeks an order under Section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicant states that it is primarily engaged in the business of operating a cloud-based data platform.

*Filing Dates:* The application was filed on September 17, 2020 and amended on October 7, 2020.

*Hearing or Notification of Hearing:* An order granting the requested declaration will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretary-Office@sec.gov* and serving Applicant with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on November 3, 2020 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretaries-Office@sec.gov*.

**ADDRESSES:** The Commission: *Secretaries-Office@sec.gov*. Applicant: 450 Concar Drive, San Mateo, California 94402.

**FOR FURTHER INFORMATION CONTACT:** Rochelle Kauffman Plesset, Senior Counsel, or David J. Marcinkus, Branch Chief, at (202) 551-6825, (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicant's Representations

1. Applicant is a Delaware corporation that, directly and through its wholly-owned subsidiaries,<sup>1</sup> provides a cloud-based data platform ("Platform") that enables customers to consolidate data to drive business insights, build data-driven applications and share data.

2. Applicant states that its business operations necessitate the Applicant to generate and maintain significant amounts of liquid capital. Applicant states that the cloud computing industry is a capital-intensive industry that requires it to have readily available capital for ongoing operations and expenditures. Applicant also states that it needs to maintain substantial liquid capital to fund research and development activities; address

fluctuations in results of its operations; and pursue potential strategic transactions, including acquisition of businesses, new technologies, services and other assets and strategic investments that complement its business.

3. Applicant states that it seeks to preserve its capital and maintain liquidity, pending the use of such capital to support its business operations, by investing in cash items, government securities, as well as in short-term investment grade and liquid fixed income and money market instruments that earn competitive market returns and provide a low level of credit risk ("Capital Preservation Investments"). Applicant states that it does not invest in securities for short-term speculative purposes.

### Applicant's Legal Analysis

1. Applicant seeks an order under Section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities and therefore is not an investment company as defined in the Act.

2. Section 3(a)(1)(A) of the Act defines the term "investment company" to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Section 3(a)(1)(C) of the Act further defines an investment company as an issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies and (b) are not relying on the exclusions from the definition of investment company in Section 3(c)(1) or Section 3(c)(7) of the Act.

3. Applicant states that it does not hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Applicant states, however, that it maintains a significant amount of intangible assets, such as internally-generated intellectual property, that may not appear on its balance sheet. In addition, Applicant states that it

<sup>1</sup> Applicant states that while its business operations are primarily conducted through the parent level entity, Snowflake also maintains wholly-owned subsidiaries that complement and advance its overall business model.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

recently engaged in an initial public offering (“IPO”) but that proceeds from that offering has been deployed only on a limited basis. Applicant states that it intends to invest a significant portion of the IPO proceeds in Capital Preservation Investments. Applicant states that it also may make a limited investment in private companies consistent with its corporate strategy. Such investments are considered to be investment securities for purposes of Section 3(a)(1)(C) of the Act. Accordingly, Applicant states that while it currently does not meet the definition of investment company in Section 3(a)(1)(C) of the Act, it will likely meet that definition following its deployment of the proceeds from its IPO and will continue to do so over the long term.

4. Section 3(b)(2) of the Act provides that, notwithstanding Section 3(a)(1)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. Applicant requests an order under Section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities, and therefore is not an investment company as defined in the Act.

5. In determining whether an issuer is “primarily engaged” in a non-investment company business under Section 3(b)(2) of the Act, the Commission considers the following factors: (a) The company’s historical development, (b) its public representations of policy, (c) the activities of its officers and directors, (d) the nature of its present assets, and (e) the sources of its present income.<sup>2</sup>

6. Applicant submits that it satisfies the criteria for issuance of an order under Section 3(b)(2) of the Act because Applicant is primarily engaged in the business of operating its Platform and is not in the business of investing, reinvesting, owning, holding, or trading in securities.

a. *Historical Development.* Applicant states that it was incorporated in 2012 and first offered its Platform in 2014, with data warehousing as its core use. Applicant states that customer have also used the Platform for additional purposes, including data engineering, data lakes, data science, data applications and data exchange.

b. *Public Representations of Policy.* Applicant states that it has consistently represented publicly that it is engaged in the business of operating its Platform. Applicant represents that it has never held itself out, and does not now hold itself out, as an investment company within the meaning of the Act or as engaging in the business of investing, reinvesting, owning, holding, or trading in securities. Applicant’s offering documents emphasize its operating results and do not emphasize either its investment income or the possibility of significant appreciation from its cash management investment strategies as a material factor in its business or future growth.

c. *Activities of Officers and Directors.* Applicant represents that its board of directors and executive officers devote substantially all of their time to overseeing Applicant’s business of providing its platform to customers. Applicant’s cash management activities are managed internally by its Chief Financial Officer and externally by four investment managers, whose activities are supervised by the Chief Financial Officer. Applicant states that its Chief Financial Officer spends less than 1% of his time monitoring Applicant’s cash balances and managing short-term investment securities in accordance with Applicant’s investment policy. Further, Applicant states that no executive officer, other than the Chief Financial Officer, spends time monitoring the cash balances and managing short-term investment securities.

Applicant states that as of July 31, 2020, it had approximately 2,037 employees. Fewer than five employees spend time on matters related to the management of Applicant’s investment securities.

d. *Nature of Assets.* Applicant states that as of July 31, 2020 Applicant’s investment securities constituted approximately 20% of its total assets (excluding Government securities and cash items) on an unconsolidated basis.<sup>3</sup> Furthermore, 100% of its investment securities consisted of Capital Preservation Investments. Applicant anticipates that once proceeds from the IPO are deployed, approximately 89% of its total assets (excluding Government securities and cash) will be in investment securities, substantially all of which will be in Capital Preservation Investments. In addition, Applicant states that it may also invest in private companies as part of its corporate strategy. However, Applicant states that

it does not plan to invest more than 10% of its total unconsolidated assets (excluding Government securities and cash items) in investment securities that are not Capital Preservation Investments, including investments made as part of its corporate development strategy. Applicant states that it expects to continue investing in Capital Preservation Investments, as well as Government securities and cash items, to fund its current and future operations.

e. *Sources of Income and Revenue.* Applicant represents that since its inception it has had net operating losses. It does, however, derive income from its investment securities. Applicant states that a review of its current sources of revenues provides a more accurate picture of its operating company status, particularly given the upward trend in recognizing substantially increased revenues based on the growth in its customers usage of the Platform. Applicant states that, for the fiscal year ended January 31, 2020, Applicant earned approximately \$252.2 million of product revenues, compared to \$95.7 million as of January 31, 2019. In contrast, Applicant earned \$10.8 million in net investment income in the fiscal year ending January 31, 2020 compared to \$ 8.4 million in net investment income in the prior fiscal year. All such income was derived from the Capital Preservation Investments, Government securities and Cash Items. Applicant states that if net investment income were compared to its total revenues it would account for approximately 4% of total revenues in the fiscal year ended January 31, 2020 and approximately 9% of total revenues for the prior fiscal year.

7. Applicant asserts that its historical development, its public representations of policy, the activities of its officers and directors, the nature of its assets and its sources of revenue, as discussed in the application, demonstrate that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading securities. Applicant thus asserts that it satisfies the criteria for issuing an order under Section 3(b)(2) of the Act.

#### **Applicant’s Conditions**

Applicant agrees that any order granted pursuant to the application will be subject to the following conditions:

1. Applicant will continue to allocate and use its accumulated cash and investment securities for bona fide business purposes; and
2. Applicant will refrain from investing or trading in securities for short-term speculative purposes.

<sup>2</sup> Tonopah Mining Company of Nevada, 26 SEC 426, 427 (1947).

<sup>3</sup> Applicant states that none of its subsidiaries holds investment securities.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90153; File No. SR-Phlx-2020-46]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 3101

October 9, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 7, 2020, Nasdaq PHLX LLC (“Phlx” 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 extend the pilot related to the market-wide circuit breaker in Rule 3101.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/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

Rule 3101 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.*, market-wide circuit breakers). The market-wide circuit breaker (“MWCB”) mechanism under Rule 3101 was approved by the Commission to operate on a pilot basis,<sup>3</sup> 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”),<sup>4</sup> including any extensions to the pilot period for the LULD Plan.<sup>5</sup> In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.<sup>6</sup> In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 3101 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.<sup>7</sup> The Exchange subsequently filed to extend the pilot for an additional year to the close of business on October 18, 2020.<sup>8</sup>

The Exchange now proposes to amend Rule 3101 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 3101.

The market-wide circuit breaker under Rule 3101 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot

basis relating to market-wide circuit breakers in 2012 (“MWCB Rules”), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.<sup>9</sup> Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 3101, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day’s closing price of that index. Currently, 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. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. 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.

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID-19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (“Taskforce”) reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) Whether to retain the

<sup>3</sup> See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-Phlx-2011-129).

<sup>4</sup> 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.

<sup>5</sup> See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-Phlx-2011-129) (Approval Order); and 68816 (February 1, 2013), 78 FR 9760 (February 11, 2013) (SR-Phlx-2013-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

<sup>6</sup> See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

<sup>7</sup> See Securities Exchange Act Release No. 85579 (April 9, 2019), 84 FR 15258 (April 15, 2019) (SR-Phlx-2019-12).

<sup>8</sup> See Securities Exchange Act Release No. 87206 (October 3, 2019), 84 FR 54234 (October 9, 2019) (SR-Phlx-2019-40).

<sup>9</sup> 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) (“MWCB Approval Order”).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.