

*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-NASDAQ-2021-058. 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-NASDAQ-2021-058 and should be submitted on or before August 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-15549 Filed 7-21-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Investment Company Act Release No. 34334; 812-15244; MVP Private Markets Fund, et al.

July 16, 2021.

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

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

*Summary of Application:* Applicants request an order to permit certain registered closed end investment companies to issue multiple classes of shares of beneficial interest with varying sales loads and to impose asset-based distribution and/or service fees.

*Applicants:* MVP Private Markets Fund ("Initial Fund"), and Portfolio Advisors, LLC ("Adviser").

*Filing Dates:* The application was filed on June 30, 2021.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on August 10, 2021, and should be accompanied by proof of service on applicants, 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, any facts bearing upon the desirability of a hearing on the matter, 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.

**ADDRESSES:** *joshua.deringer@faegredrinker.com.*

**FOR FURTHER INFORMATION CONTACT:** Lisa Reid Ragen, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and condition, please refer to Applicants' application, dated June 30, 2021, which may be obtained via the Commission's website by searching for the file number, using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-15546 Filed 7-21-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92428; File No. SR-NYSE-2021-40]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12

July 16, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 2, 2021, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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](http://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,

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

The Exchange proposes to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers in Rule 7.12. The Exchange understands that upon approval of this proposal, the other cash equities exchanges and FINRA (collectively, the "SROs") will also submit substantively identical proposals to the Commission [sic].

Rules Overview

The Market-Wide Circuit Breaker ("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)).<sup>4</sup> 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").<sup>5</sup> 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.

Extensions of the Pilot Rules

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"),<sup>6</sup> including any extensions to the pilot period for the LULD Plan.<sup>7</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>8</sup> In conjunction with the proposal to make the LULD Plan permanent, the Exchange amended Rule 80B to untie the Pilot Rules' effectiveness from that of the LULD Plan and to extend the Pilot Rules' effectiveness to the close of business on October 18, 2019.<sup>9</sup> The Exchange subsequently amended Rule 80B<sup>10</sup> and the corresponding Pillar rule, Rule 7.12, to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2020,<sup>11</sup> and later, on October 18, 2021.<sup>12</sup>

The MWCB Task Force and March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force ("Task Force") to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity

Futures Trading Commission ("CFTC"), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

Beginning in February 2020, the following events occurred, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020:

- *February 21, 2020 (Friday)*: Related to COVID-19 concerns, market volatility began to increase, with SPX falling 1.1%.<sup>13</sup>

- *February 22-23, 2020 (Saturday-Sunday)*: Concerns related to COVID-19 increased during the weekend.

- *February 24, 2020 (Monday)*: SPX opened 2.4% below the previous Close and ended the day down 3.4%. Unrelatedly, Amendment 18 of the LULD Plan (which eliminated double-wide bands for some symbols at the open and close) was implemented on this date.

- *February 27, 2020 (Thursday)*: Elevated volatility persisted during the week, peaking with a 4.4% drop in SPX on this date.

- *February 28, 2020 (Friday)*: Amid continuing volatility stemming from COVID-19 concerns and a rebalance of MSCI indices at the close, the U.S. equity market traded 19.375 billion shares—at the time, the second most active volume day in history.<sup>14</sup>

- *February 29-March 1, 2020 (Saturday-Sunday)*: Over this weekend, various global actors including the Federal Reserve, the European Central Bank, and the Bank of Japan, issued statements indicating that they would intervene to support markets.

- *March 2, 2020 (Monday)*: In response to expectations of central bank stimulus, the market rallied with a 4.6% increase in SPX.

- *March 3, 2020 (Tuesday)*: Markets remained volatile, with SPX falling 2.8%. The market trading range on that date was 5.2%. By comparison, the average daily move over the first three weeks of February had been 0.7%.

- *March 2-6, 2020 (Monday-Friday)*: On average, the close-to-close market decreased 3.3% per day between March 2 and March 6.

- *March 7-8, 2020 (Saturday-Sunday)*: Negative news regarding COVID-19 multiplied over the weekend, with increasing deaths in Italy<sup>15</sup> and multiple members of

<sup>4</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) ("Pilot Rules Approval Order").

<sup>5</sup> 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).

<sup>6</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>7</sup> See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-NYSE-2011-48) (Approval Order); and 68784 (January 31, 2013), 78 FR 8662 (February 6, 2013) (SR-NYSE-2013-10).

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

<sup>9</sup> See Securities Exchange Act Release No. 85560 (April 9, 2019), 84 FR 15247 (April 15, 2019) (SR-NYSE-2019-19). At that time, Rule 7.12 existed but was not operative with respect to Exchange-listed securities and was not amended to extend its effectiveness through October 18, 2019.

Subsequently, all Exchange-listed securities transitioned to the Pillar trading platform. See Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR-NYSE-2019-05).

<sup>10</sup> Rule 80B is no longer operative. See Securities Exchange Act Release No. 88402 (March 17, 2020), 85 FR 16436 (March 23, 2020) (SR-NYSE-2020-20).

<sup>11</sup> See Securities Exchange Act Release No. 87016 (September 19, 2019), 84 FR 50502 (September 25, 2019) (SR-NYSE-2019-51).

<sup>12</sup> See Securities Exchange Act Release No. 90134 (October 8, 2020), 85 FR 65107 (October 14, 2020) (SR-NYSE-2020-84).

<sup>13</sup> All market index statistics sourced from <http://finance.yahoo.com>.

<sup>14</sup> Source: NYSE Daily Trade and Quote.

<sup>15</sup> <https://www.wsj.com/articles/italy-with-elderly-population-has-worlds-highest-death-rate-from-virus-11583785086>.

Congress forced to self-quarantine.<sup>16</sup> As Asian markets opened for Monday trading (during Sunday evening Eastern Time), oil prices “collapsed” after Saudi Arabia announced plans to boost output, with Brent crude dropping as much as 30%. These developments led the E-mini S&P 500 futures contract to reach its limit-down state (a 5% decline) on the Chicago Mercantile Exchange (“CME”) overnight Sunday into Monday.<sup>17</sup>

- *March 9, 2020 (Monday) (First MWCB Halt):* As cash equity markets in the U.S. opened at 9:30 a.m., SPX began updating its value as each component stock commenced trading. At 9:34:13 a.m., SPX crossed the 7% threshold to trigger a Level 1 MWCB halt, halting trading for 15 minutes. Reopening auctions began on primary exchanges at 9:49:13 a.m. Shortly after trading resumed, SPX gained value, reaching as high as 5.5% down from Friday’s close, before closing down 7.6% from Friday’s close.

- *March 10, 2020 (Tuesday):* The market recovered somewhat on this date.

- *March 12, 2020 (Thursday) (Second MWCB Halt):* COVID-19 fears took hold again after “global health authorities declared the virus a pandemic,”<sup>18</sup> with the E-mini S&P 500 futures contract reaching its limit-down state overnight. At 9:35:44 a.m., SPX crossed the 7% threshold to trigger a Level 1 MWCB halt. Reopening auctions began on primary exchanges at 9:50:44 a.m. After trading resumed, the market recovered value somewhat before falling again and ending the day down 9.5%.

- *March 13, 2020 (Friday):* The market vacillated throughout the day before rallying into the close, with SPX closing up 9.3% on the day but down 8.8% for the week.

- *March 14–15, 2020 (Saturday–Sunday):* Negative COVID-19 news continued over the weekend, with more parts of the U.S. economy shutting down. On Sunday, the Federal Reserve cut interest rates to nearly 0%.

- *March 16, 2020 (Monday) (Third MWCB Halt):* E-mini S&P 500 futures again hit a limit-down state in overnight trading. Selling pressure was so intense that the Level 1 MWCB threshold of 7% down was crossed at 9:30:01 a.m. Given the rapid and severe price drops, the vast majority of SPX stocks did not

complete a primary listing exchange opening auction prior to the Level 1 halt being triggered. Reopening auctions began on primary listing exchanges at 9:45:01 a.m. Trading resumed at lower price levels before the market recovered over the course of the day, but SPX started falling in the final 35 minutes of the trading day after President Trump said the virus “may not be under control until July or August.”<sup>19</sup> The day ended down 12% from Friday’s close.

- *March 17, 2020 (Tuesday):* The Federal Reserve announced a lending facility to support short-term debt markets, and the Trump Administration indicated support for a stimulus plan including direct payments to individuals.<sup>20</sup> The market rallied, with SPX gaining 6%.

- *March 18, 2020 (Wednesday) (Fourth MWCB Halt):* Negative sentiment returned, with price drops across multiple asset classes. After initially rising after the open, the market started dropping around 10:45 a.m. and crossed the Level 1 MWCB threshold at 12:56:17 p.m. Reopening auctions began on primary exchanges at 1:11:17 p.m. SPX fell further after the market reopened but then rallied into the close to finish the day down 5.2%. After the close, the New York Stock Exchange (“NYSE”) announced that its Trading Floor would close effective Monday, March 23, 2020, due to COVID-19.

- *March 20, 2020 (Friday):* SPX dropped an additional 4.3%.

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.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the

requested change, which became effective on October 12, 2020.<sup>21</sup>

#### The MWCB Working Group’s Study

On September 17, 2020, the Director of the Commission’s Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 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. The Working Group’s efforts in this respect incorporated and built on the work of an MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the “Study”).<sup>22</sup> In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group’s conclusions and recommendations.

#### Analysis

After evaluation and analysis, the Working Group reached five key conclusions. The Exchange adopts and agrees with these conclusions and accordingly believes that the MWCB rules should be made permanent. The conclusions and factual support for each conclusion are below.

##### 1. The MWCB Mechanism Set Out in the Pilot Rules Worked as Intended During the March 2020 Events

The Working Group concluded that the MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events. The Exchange

<sup>21</sup> See [https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392\\_1.pdf](https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf); [https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392\\_2.pdf](https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_2.pdf).

<sup>22</sup> See *Report of the Market-Wide Circuit Breaker (“MWCB”) Working Group Regarding the March 2020 MWCB Events*, submitted March 31, 2021 (the “Study”), attached hereto as Exhibit 3; also available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/Report\\_of\\_the\\_Market-Wide\\_Circuit\\_Breaker\\_Working\\_Group.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf).

<sup>16</sup> <https://www.wsj.com/articles/number-of-congressional-lawmakers-in-self-quarantine-grows-to-five-11583785594>.

<sup>17</sup> <https://www.bloomberg.com/news/articles/2020-03-08/rout-in-u-s-stock-futures-would-trigger-trading-curbs-at-5>.

<sup>18</sup> <https://www.wsj.com/articles/global-stocks-follow-u-s-markets-lower-11583975524>.

<sup>19</sup> <https://www.wsj.com/articles/stocks-dow-slide-after-fed-slashes-rates-11584310328>.

<sup>20</sup> <https://www.wsj.com/articles/u-s-futures-rise-as-asia-markets-gyrate-11584413763>.

adopts and agrees with this conclusion, for the reasons set out below and in the Study.

On March 9, 12, 16, and 18, 2020, as market conditions indicated that a Level 1 MWCBC Halt was likely, the Exchange activated an “Intermarket Bridge” call and sent an email alert to a pre-existing distribution list comprising multiple staff from securities and futures exchanges, FINRA, the SEC, the CFTC, the Depository Trust & Clearing Corporation, and the Options Clearing Corporation. On each day, the call opened before the 7% trigger was hit and remained open during the entire period of the halt, until trading in all symbols was reopened.

When SPX declined 7% from the previous day’s closing value, the MWCBC Level 1 Breach messages and resulting Regulatory Halt messages operated as designed. All 9,000+ equity symbols were halted in a timely manner.

In addition, the Exchange and the Cboe markets sent blast halt alerts to industry subscribers. For example, on March 18, 2020, Cboe sent the following notice:

Effective 12:56:17 ET Cboe Equities exchanges have halted trading due to a Level 1 Market Wide Circuit Breaker breach.

During the entirety of the Halt period, new orders and cancels will be accepted on the BYX, EDGA, and EDGX exchanges for all symbols and on the BZX Exchange for non BZX-listed symbols. Orders will be entered in a queued state and wait for the re-opening requirements. BZX will reject new orders in BZX-listed symbols until 5 minutes before the halt is scheduled to lift. Orders placed prior to the halt may be cancelled depending on cancel on halt port settings. The exchanges will be scheduled to re-open at approximately 13:11:17 ET.

Similarly, the Exchange sent the following notice on the same date:

Due to a 7 percent decline in the S&P 500 index, in accordance with the NYSE, NYSE Arca, NYSE American, NYSE National and NYSE Chicago Rule 7.12, equity trading at the NYSE Exchanges has been halted. Information about order entry during the halt and the reopening process is available here.

The market will re-open today at the following time: 13:11:17 ET.

When the Regulatory Halt messages reached the options markets, consistent with their respective rules that require the options markets to halt if there is a MWCBC Halt in the cash equities market, they halted trading in approximately 900,000 options series. A total of approximately 5,000 options trades that were sent to OPRA after the time of the four MWCBC Halts were nullified.

Specifically, the Nasdaq options markets (BX, PHLX, NOM, ISE, GEMX, MRX) nullified approximately 4,800 trades and the two NYSE options

markets (NYSE American and NYSE Arca) nullified approximately 180 trades pursuant to those markets’ “obvious error” rules.

CME is not a subscriber to the equity SIP data feeds. In the event of a MWCBC Halt, CME halts trading in affected symbols manually upon notification of the breach during the Intermarket Bridge call. At the outset of each event in March 2020, CME staff responded to the Exchange staff’s announcement of the halt during the Intermarket Bridge call. CME halted affected symbols approximately one minute after each breach was triggered. Approximately 4,400 contracts (futures and options on futures on all U.S. equity indices) traded on the CME between the time the breach was declared and the time CME halted trading. No trades on CME were nullified.

The Exchange concludes from the foregoing that the MWCBC mechanism operated as intended in March 2020. The markets were in communication before, during, and after the MWCBC Halts occurred, and all 9,000+ equity symbols were successfully halted in a timely manner.

## 2. The MWCBC Halts Triggered in March 2020 Appear To Have Had the Intended Effect of Calming Volatility in the Market, Without Causing Harm

The Working Group concluded that the MWCBC halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm. The Exchange adopts and agrees with this conclusion, for the reasons set out below and in the Study.

The Working Group examined the following measurements of liquidity and volatility preceding each of the March 2020 MWCBC Halts and compared them to liquidity and volatility measurements for other trading periods. In particular, the Working Group examined:

1. Activity before the opening of regular trading hours;
2. Occurrence of opening on a trade versus opening on a quote;<sup>23</sup>
3. Size and liquidity in the opening auctions and post-MWCBC halt reopening auctions as measured by shares available based on imbalance messages;
4. Quote volatility as measured by average mid-point to mid-point price change every second in basis points; and
5. Liquidity at the national best bid and offer (“NBBO”); and

<sup>23</sup> An opening auction can conclude two ways: (1) Orders are paired off and a trade is executed (“opening on a trade”), or (2) orders are not paired off and the auction ends with the publication of a quote (“opening on a quote”).

6. LULD Trading Pauses following MWCBC Reopening Auctions.

In the graphs and discussion below, the following abbreviations apply:

- Group 1 (G1) = S&P 500 Tier 1<sup>24</sup> securities
- Group 2 (G2) = Other non-ETP Tier 1 securities
- Group 3 (G3) = Tier 1 ETPs
- Group 4 (G4) = Non-ETP Tier 2 securities and symbols not included in the in LULD Plan (*i.e.*, rights/warrants)
- Group 5 (G5) = Tier 2 ETPs

In general, the graphs and discussion below break out data for each of the four MWCBC Halt days individually, and compare it to two time periods: (i) January 2020, and (ii) the period from February 24 through May 1, 2020, excluding the four days with MWCBC Halts (also referred to as the “High-Volatility Period”).

### a. Activity Before the Opening of Regular Trading Hours

SEC staff asked the Working Group to review volatility and liquidity preceding the four MWCBC Halts. To do so, the Working Group examined activity in SPY before the opening of regular trading hours on the four MWCBC Halt days. With the exception of the occasional “news,” stock impacted by earnings surprises, or other significant corporate or socio-political events, early morning trading activity is typically limited. This baseline is shown in *Chart 1* of the Study<sup>25</sup> by the data from January 2020. Specifically, in January 2020, prior to the opening of regular trading hours at 9:30 a.m., SPY averaged barely over one million shares traded per day, and its average trading range was 66 basis points.

The impact of COVID-19 and the rapid adjustment in attitudes towards economic activity changed that. During the High-Volatility Period that began on February 24, pre-opening activity in SPY rose to six million shares traded per day, with an average trading range of 390 basis points. The pre-regular trading hours activity on the four MWCBC days in March 2020 was even higher, resulting in volumes roughly five to nine times those January levels, with pre-market ranges reaching as high as 10%.

<sup>24</sup> Tier 1 and Tier 2 refer to groups of securities prescribed in the LULD Plan. Tier 1 comprises S&P 500/Russell 1000 securities as well as the active ETPs. Tier 2 comprises the balance of NMS securities, except rights and warrants.

<sup>25</sup> See Study, *supra* note 22, at 14.

b. Securities Opening on a Trade vs. Opening on a Quote on Days With MWCB Halts

SEC staff also asked the Working Group to review whether there were any differences between the number of securities that opened on a trade vs. opened on a quote on the four days with MWCB Halts. By including this information here, the Exchange does not express any opinion about whether opening on a trade is preferable or superior to opening on a quote. In the Exchange's view, so long as the opening quote represents a fair price for the security, opening on a quote is not an indication of an ineffective opening or reopening process.

As shown in *Chart 2* of the Study,<sup>26</sup> there was no meaningful difference in the percentage of securities opening on a trade versus on a quote (i) on each of the four MWCB Halt days, (ii) during January 2020, and (iii) during the High-Volatility Period. The one exception was in G5 securities (*i.e.*, Tier 2 ETPs), a higher percentage of which opened on a trade on the four MWCB Halt days than in January or during the High-Volatility Period.

Note that in *Chart 2*, "reopens" are reopening auctions for stocks that had already opened prior the MWCB halts. The Exchange accordingly expects there to be less interest represented in those reopening auctions.

c. Size and Liquidity of Opening and Reopening Auctions

In order to assess the liquidity available in the reopening auctions following the four MWCB Halts, the Working Group compared the volumes in these reopening auctions to the average volumes in opening auctions in January 2020. *Chart 3* of the Study<sup>27</sup> compares (i) the median opening auction volumes in shares traded for the January 2020 period, (ii) the median opening auction volumes in shares traded for the High-Volatility Period, and (iii) the median volumes in shares traded in the reopening auctions following the MWCB Halts for symbols that had already executed opening auctions.

Given that many securities had already opened before the MWCB Halt on the four MWCB Halt days, the size of the reopening auctions for those securities was somewhat smaller. The Exchange believes that this is unsurprising, and would not expect a reopening auction to be as large as an opening auction.

The Working Group also compared the size of the *opening auctions plus reopening auctions* following the MWCB Halts on the MWCB Halt days to the size of opening auctions in the January 2020 period, in order to try to assess whether the MWCB Halts resulted in a loss of liquidity overall during the auctions.

*Charts 4a and 4b* of the Study are two scatter plot charts that compare average daily volume in opening auctions during the January 2020 period with the average of the volume in opening auctions *plus* post-MWCB Halt reopening auctions on March 9, 12, and 16.<sup>28</sup> *Chart 4a*<sup>29</sup> shows those three MWCB Halt days combined, while *Chart 4b*<sup>30</sup> focuses on the March 16 MWCB Halt, which occurred less than two seconds after the opening of regular trading hours.

These scatter plot charts show that, on average, the size of the opening auctions *plus* reopening auctions on the MWCB Halt days was not very different than the size of opening auctions in the January 2020 period. The charts include regression lines, which show that the opening auction *plus* MWCB reopening auction volumes on the MWCB Halt days hewed closely to the January 2020 auction volumes.

In *Chart 4b*, regarding the March 16 MWCB Halt, the green dots show that many securities had not started trading or quoting before the halt at 9:30:01 a.m. However, even under those conditions, the green trendline shows that the size of the reopening auctions after the March 16 MWCB Halt were still similar to opening auction volumes in the January 2020 period.

SEC staff also asked the Working Group to review the participation by market makers in the reopening auctions after the MWCB Halts. The Working Group did so by examining principal versus agency activity as a proxy for gauging the level of proprietary market maker trading activity, since liquidity providers generally act as principal on such transactions and agency trades are more typically associated with customer flow from institutional or retail investors. The Working Group also reviewed the Top 5 firms in each category, using January 2020 activity as a point of comparison.

As *Chart 5* of the Study<sup>31</sup> shows, compared to the January 2020 period, the share of the opening auctions

represented by principal transactions was higher on the MWCB days, as well as during the High-Volatility Period. Although principal activity was lower in the reopening auctions than the opening auctions, each of the MWCB Halt days (except for March 18) showed generally increasing principal participation over the previous MWCB Halt days.

Similarly, *Chart 6* of the Study<sup>32</sup> shows the share of trades executed in the opening auctions and executed in the MWCB reopening auctions represented by transactions involving the top five participants from the January 2020 period. In almost all breakouts, the top five firms represent a larger share of MWCB reopening auctions than of the opening auctions, further highlighting the critical importance of liquidity from the most active market participants in providing liquidity in the MWCB reopening auctions.<sup>33</sup>

SEC staff also asked the Working Group to examine how quickly stocks opened following each of the four MWCB Halts. *Chart 7* of the Study<sup>34</sup> shows that, on all four dates, even given the uncertainty caused by the MWCB Halts, all SPX stocks reopened within 15 minutes of the end of the MWCB Halt. The quickest reopens were on March 18, which may be due to the fact that (i) all securities had been trading, allowing for better price discovery and faster accretion of liquidity, (ii) the improved learning curve from the prior three MWCB Halts in just over a week,<sup>35</sup> and (iii) the MWCB Halt was triggered by a gradual price drop and there was no sudden price dislocation at that time.

d. Quote Volatility

The Working Group also examined quote volatility on the MWCB Halt days. Liquidity typically decreases with higher volatility, so examining quote volatility is another way to study the effects of the MWCB Halts on liquidity. If quote volatility stabilized following the reopening auctions after the MWCB Halts, that would indicate that the MWCB Halts had the intended effect of calming volatility.

<sup>26</sup> See *id.* at 20.

<sup>27</sup> The result for G5 was impacted by a 30 million share reopen in one leveraged ETP, which accounted for a very large share of the total G5 reopen.

<sup>28</sup> See Study, *supra* note 22, at 23.

<sup>29</sup> Industry participants in the Working Group noted some initial uncertainty created by differences in market practices (*e.g.*, order submission/cancellation, auction collars), but also recognized that real world experience gained after the first halt mitigated the issue.

<sup>30</sup> March 18 was excluded from this analysis since the MWCB Halt that day occurred midday, not in the early morning period.

<sup>31</sup> See Study, *supra* note 22, at 17.

<sup>32</sup> See *id.* at 17.

<sup>33</sup> See *id.* at 18.

<sup>26</sup> See *id.* at 14.

<sup>27</sup> See *id.* at 15.

As *Chart 8* of the Study<sup>36</sup> shows, although the median second-to-second quote volatility was generally higher on the four MWCB Halt days as compared to January 2020 and the High-Volatility Period, volatility quickly subsided following the reopening auctions after the MWCB Halts and stabilized at a level similar to volatility in the High-Volatile Period. ETP volatility (G3 and G5) largely subsided after the reopening auctions following the MWCB Halts and stabilized near January 2020 levels, apart from brief spikes midday on March 12 and 18. This stabilization may be an indication that the MWCB Halts on these days helped to calm the market, since volatility did not continue to escalate throughout the day.

*Chart 9* of the Study<sup>37</sup> shows that almost all of the days with the most quote volatility were the four days with MWCB Halts.<sup>38</sup>

The Working Group also calculated quote volatility for the five-minute time periods preceding the MWCBs, for (i) the four MWCB dates, (ii) January 2021, and (iii) the High-Volatility Period. As shown in *Chart 10* of the Study,<sup>39</sup> the opening volatility was noticeably higher on the MWCB days, including March 18, when the market did not halt until midday. Note that measurements for March 16 represent only one second of trading and are based on limited observations.

#### e. Liquidity at the NBBO

The Working Group also examined liquidity at the NBBO on the days when MWCB Halts were triggered, in order to understand the impact of the MWCB Halts on liquidity. To do so, the Working Group compared the median size at the NBBO for (i) each of the four MWCB Halt days, (ii) January 2020, and (iii) the High-Volatility Period. As shown in *Chart 11* of the Study,<sup>40</sup> early morning liquidity was lower on the MWCB Halt days, but many stocks did not open at 9:30 a.m., and on the three days with early morning MWCB Halts, many stocks did not open on the

primary listing exchange until after trading resumed.

The results prior to the March 18 midday MWCB Halt tell a different story. That MWCB Halt was not a sudden adjustment to overnight activity. In most of the groups of securities, size at the inside on March 18 was similar to January 2020 levels for the 12:50–12:55 p.m. period and was slightly larger for non-ETPs when compared to the remainder of the High-Volatility Period.

*Chart 12* of the Study<sup>41</sup> shows that most of the large decreases in size at the inside were on the four days with MWCB Halts.

#### f. LULD Trading Pauses Following MWCB Reopening Auctions

The Working Group also reviewed how often securities entered into an LULD Trading Pause following the reopening auctions after the MWCB Halts. A large number of LULD Trading Pauses could be interpreted to suggest that more robust reopening procedures were required, or that the reopenings occurred too quickly after the MWCB reopens and the market did not have the opportunity to truly reprice. The Working Group therefore also compared how many LULD Trading Pauses were caused by a limit-up state versus a limit-down state.

Not surprisingly, there were more limit-up LULD Trading Pauses following MWCB reopening auctions from MWCB Halts, as the markets (at least initially) bounced back following the large drops at the opening auction. March 18 was the exception, where there was little difference between the number of limit-up and limit-down pauses. March 16, the day on which a MWCB halt was triggered one second after the opening of regular trading hours, saw the greatest number of LULD Trading Pauses, especially within 30 minutes of the market reopening; this is unsurprising since there was little trading prior to the MWCB Halt and far fewer stocks had opened prior to the halt.

*Charts 13 and 14*<sup>42</sup> show the number of LULD Trading Pauses within 5 and 30 minutes of MWCB reopening auctions, broken out by whether the stock had opened prior to the MWCB Halt and whether the reopening auction concluded with a trade or a quote.

There were few consistent results across dates or Groups, although in almost all cases there were more limit-up pauses than limit-down pauses. The main observation for G1 securities is

that stocks that did not have their primary listing market opening auction until after the MWCB Halt had more LULD Trading Pauses than stocks that opened before the MWCB Halt was triggered. There were consistently more limit-up Trading Pauses than limit-down Trading Pauses, and the increase in Trading Pauses over the 30-minute period after the opening auction compared to the first five minutes after the opening auction was larger for stocks that did not open until after the MWCB Halt.

G2 stocks did not show as clear a trend. On March 9, for stocks that already opened before the MWCB Halt, there were more limit-down Trading Pauses than limit-up Trading Pauses. On March 12, the incidence of Trading Pauses was similar for stocks that had opened prior to the MWCB and those that did not, while March 16th showed a pattern similar to G1 stocks.

For both G1 and G2 stocks, there were relatively few reopens on a quote.

G3 (Tier 1 ETPs) all opened prior to the MWCB Halt on March 9, 12 and 18. Most reopened on a trade, and those that reopened on a quote only had LULD Trading Pauses on March 18 in the five minutes after the reopening auction. Limit-up Trading Pauses were far more likely on March 12 and March 16, but the differences were smaller on March 9 and 18. Note also that some ETPs, such as inverted equity and some fixed income based, may naturally move opposite the overall market.

Regarding G4 (Tier 2 non-ETPs), LULD pauses were less frequent in the first five minutes following the MWCB Halts. Limit-up Trading Pauses were more common than limit-down. ETPs that did not open prior to the MWCB Halts had a slightly higher likelihood of pausing in the next five and 30 minutes, but not across all dates and time frames.

G5 (Tier 2 ETPs) hit very few Trading Pauses within five minutes of reopening, although more occurred in the following 25 minutes.

The Working Group also reviewed the likelihood of an LULD Trading Pause being triggered following the MWCB reopening auctions in ETPs that were subject to extension logic for trading collars, as compared to those that were not subject to extension logic. At the time of the MWCBs, NYSE Arca and CBOE BZX maintained collars for their reopening auctions with extension logic, but Nasdaq did not. (Nasdaq has since implemented collars with extension logic for MWCB reopening auctions.)

<sup>36</sup> See Study, *supra* note 22, at 24.

<sup>37</sup> See Study, *supra* note 22, at 25.

<sup>38</sup> These charts show, for each time period, the high and low quote volatility measures. The point where the dark grey and light grey meet are the median volatility. The boxes are represented by 1.5 times the interquartile range with the quartiles at the 75th percentile and the 25th percentile. For example, if the 25th percentile is 10 basis points and the 75th quartile is 14 basis points, we had  $(14 - 10) \times 1.5$  or 6 basis points to the 75th quartile and subtract that from the 25th quartile. Thus, the box would represent all values between 4 and 20 basis points and outliers would be results above or below those figures.

<sup>39</sup> See Study, *supra* note 22, at 26.

<sup>40</sup> See *id.* at 27.

<sup>41</sup> See *id.* at 27.

<sup>42</sup> See *id.* at 29–30.

Chart 15 of the Study<sup>43</sup> shows that, across the four days with MWCB Halts, the likelihood of an LULD Trading Pause within five minutes or 30 minutes of reopening after the MWCB Halt was higher for ETPs that were not subject to a collar with extension logic than for those that did have a collar with extension logic.

\* \* \* \* \*

The Exchange concludes that the analysis above shows that the MWCB Halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm. Specifically:

- There was no significant difference in the percentage of securities that opened on a trade versus on a quote on the four days with MWCB Halts versus the other periods studied.

- 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 is on average equal to opening auctions in January 2020. This indicates that the MWCB Halts on the four days in question did not cause liquidity to evaporate.

- All securities in SPX reopened within 15 minutes following the end of the MWCB Halts.

- Quote volatility was generally higher on the four MWCB Halt days as compared to the other periods studied, but quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels.

- LULD Trading Pauses following the MWCB Halts worked as designed to address intra-day volatility.

### 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

The Working Group concluded that the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and the Level 1 and 2 halt times (15 minutes) is appropriate. The Exchange adopts and agrees with these conclusions, for the reasons set out below and in the Study.

Currently, the MWCB mechanism uses SPX as the reference for determining when the market has fallen 7%/13%/20% triggering a Level 1/Level 2/Level 3 halt, respectively. To determine whether these elements are appropriately set, the Working Group reviewed the history of MWCB Halts, reference value, and trigger levels since their inception in 1988. While surgical precision in setting these levels is not

possible, the Working Group concluded, and the Exchange agrees, based on the real-world testing of the trigger levels and reference index during more than 30 years of trading and a review of alternative indices, that the current trigger levels and reference index are appropriately set.

### History of the Development of the MWCB Mechanism Since 1988

On October 19, 1987, the DJIA declined 22.6%. In response, U.S. exchanges established the first “circuit breakers,”<sup>44</sup> designed to temporarily restrict trading in stocks, stock options, and stock index futures when markets experience a severe, rapid decline.<sup>45</sup> This original circuit breakers mechanism, approved by the SEC in 1988, provided that halts would be triggered by declines of a set number of points in the DJIA. Specifically, if the DJIA declined by 250 points from its previous day’s close, the markets would halt trading for one hour. If, on that same day, the DJIA declined by a total of 400 points from the previous day’s close, the markets would halt for two hours.<sup>46</sup>

Amendments approved by the SEC in July 1996 reduced the duration of the 250 and 400 points halts to 30 minutes and 60 minutes from one hour and two hours, respectively.<sup>47</sup> This reduction in halt duration corresponded to the “significant technological progress made by the securities markets and the broker-dealer community since 1988 in efficiently accommodating large order imbalances that may occur under volatile market conditions.” Further amendments approved in January 1997 increased the two trigger values to 350

<sup>44</sup> The Report of the Presidential Task Force on Market Mechanisms (the “Brady Report”) noted that the market disorders of October 1987 “became, in effect, ad hoc circuit breakers, reflecting the natural limits to market liquidity.” Accordingly, the Brady Report maintained that the October 1987 Market Break “demonstrates that it is far better to design and implement coherent, coordinated circuit breaker mechanisms in advance, than to be left at the mercy of the unavoidable circuit breakers of chaos and system failure.” See Nicholas Brady, Report of the Presidential Task Force on Market Mechanisms (January 1988) at 66.

<sup>45</sup> See Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (October 24, 1988) (SR-CBOE-88-14; SR-NASD-88-46; SR-NYSE-88-22; SR-NYSE-88-23; SR-NYSE-88-24; SR-AMEX-88-24).

<sup>46</sup> The 250-point and 400-point triggers represented 12% and 19% of the DJIA when implemented.

<sup>47</sup> See Securities Exchange Act Release Nos. 37457 (July 19, 1996), 61 FR 39176 (July 26, 1996) (SR-NYSE-96-09); 37458 (July 19, 1996), 61 FR 39167 (July 26, 1996) (SR-Amex-96-13); and 37459 (July 19, 1996), 61 FR 39172 (July 26, 1996) (SR-BSE-96-4; SR-CBOE-96-27; SR-CHX-96-20; SR-Phlx-96-12).

and 550 points.<sup>48</sup> In their filings, the exchanges noted that the proposed new levels of 350 and 550 points would represent approximately a 5.4% and 8.5% decline in the DJIA, respectively, reflecting significant market declines that they believed served as appropriate levels for triggering a brief trading halt.

These circuit breakers were triggered for the first time since their adoption on October 27, 1997, when the DJIA experienced two declines, totaling 554 points, or 7.2%. The first circuit breaker of 30 minutes was triggered at 2:36 p.m. when the DJIA declined 350 points (4.54%) from the previous day’s close. After the market reopened at 3:06 p.m., the DJIA continued to drop another 200 points, triggering the second circuit breaker at 3:30 p.m. Because the second circuit breaker was triggered at 3:30 p.m., within the last hour of trading, the market was closed for the remainder of the day.

The consensus view of the October 27, 1997 halts was that the circuit breaker thresholds of 350 and 550 points needed to be raised significantly as the percentage declines associated with those hard values did not justify halts in trading.<sup>49</sup> It was believed that the circuit breakers’ low point value level, close proximity to each other, and the fact that the second circuit breaker would close the market for the remainder of the day, may have contributed to selling pressure after the first halt was lifted. Additionally, the 7% decline in the DJIA around 3:30 p.m. should not have caused trading to be halted for the remainder of the day.<sup>50</sup>

In a report by SEC staff analyzing the event, the staff stated:

First, the circuit breaker thresholds needed to be raised significantly from those in place on October 27. When the 350-point trigger was reached on October 27, the DJIA was down only 4.54%, a level that had been reached on 11 previous days since 1945. Moreover, there was little evidence of the types of market liquidity constraints that would have justified cross-market halts. Circuit breaker halts should be reserved for an abrupt market decline of a magnitude that raises concerns that the exhaustion of market liquidity might result in uncoordinated, *ad hoc* market closures.<sup>51</sup>

<sup>48</sup> See Securities Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) (SR-NYSE-96-38; SR-Amex-96-49; SR-CBOE-96-78; SR-CHX-96-33; SR-BSE-96-12; SR-Phlx-97-03). The Commission approved each of the Exchanges’ revised circuit breaker rules on a one-year pilot basis that expired on January 31, 1998.

<sup>49</sup> See *Trading Analysis of October 27 and 28, 1997*, A Report by the Division of Market Regulation U.S. Securities and Exchange Commission, dated September 1998, available at <https://www.sec.gov/news/studies/tradrep.htm#chs>.

<sup>50</sup> See *id.* at Part III, Section IV.

<sup>51</sup> See *id.*

<sup>43</sup> See *id.* at 31.

In January 1998, the exchanges adopted interim changes to the circuit breaker rules. These changes provided that if, at or before 3:00 p.m., the DJIA were to fall 350 or more points below its previous trading day's closing value, trading in all stocks and equity-based options on the exchanges would halt for 30 minutes, while trading would not be halted for such a decline after 3:00 p.m. In addition, if, on the same day, the DJIA dropped 550 or more points from its previous trading day's close, trading in all stocks and equity-based options on the exchanges would halt for 60 minutes, except that if the 550-point decline occurred after 2:00 p.m. but before 3:00 p.m., the halt would be for 30 minutes instead of 60 minutes, and if the 550-point drop occurred at or after 3:00 p.m., trading would close for the remainder of the day. These interim changes were adopted only until the markets could agree on modifications to raise the circuit breaker trigger levels significantly.

In April 1998, the exchanges implemented new circuit breaker trigger levels based upon percentage declines in the DJIA, rather than specified point declines.<sup>52</sup> These percentage declines were set at 10%, 20%, and 30%, as follows:

- Level 1—10% decline in DJIA:
  - Before 2:00 p.m., the market will close for one hour
  - Between 2:00 p.m. and 2:30 p.m., the market will close for 30 minutes
  - No Level 1 after 2:30 p.m.
- Level 2—20% decline in DJIA:
  - Before 1:00 p.m., the market will close for two hours
  - Between 1:00 p.m. and 2:00 p.m., the market for one hour
  - After 2:00 p.m., the market will close for the day
- Level 3—30% decline in DJIA:
  - The market will close for the remainder of the day, regardless of what time the decline occurs

These values were calculated at the beginning of each calendar quarter, using the average closing value of the DJIA for the previous month to establish specific point values for the quarter.

These values were approached but not breached on May 6, 2010, when the U.S. securities and futures markets experienced a severe disruption, often referred to as the "Flash Crash." Between 2:32 p.m. and 2:45 p.m., the DJIA dropped about 9% and then rebounded within minutes.<sup>53</sup> The

<sup>52</sup> See Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR-NYSE-98-06; SR-Amex-98-09; BSE-98-06; SR-CHX-98-08; SR-NASD-98-27; SR-Phlx-98-15).

<sup>53</sup> Approximately 86% of securities reached lows for the day that were less than 10% away from the

decline never reached the 10% trigger, so securities trading continued unhalted.<sup>54</sup>

In response to the events of May 6, 2010, the SEC adopted several new rules and approved NMS Plans and changes to SRO rules,<sup>55</sup> including: (i) A ban on stub quotes; (ii) single stock circuit breakers, which were later replaced by the LULD Plan; (iii) revisions to the MWCBC rules; (iv) the Consolidated Audit Trail; and (v) Regulation Systems Compliance and Integrity (Regulation SCI). Specifically, the changes made to the MWCBC rules were:

- The DJIA was replaced by the SPX, which provides a broader base of securities against which to measure volatility.<sup>56</sup>
  - Circuit breaker thresholds are calculated on a daily rather than quarterly basis.
    - Level 1 and 2 halts are allowed only once per day.
      - Level 1 and 2 halts were shortened from 30 minutes to 15 minutes. Non-primary markets are allowed to reopen after 15 minutes even if the primary market has not reopened.<sup>57</sup>
        - Level 1 and 2 halts are permitted up to 3:25 p.m., instead of only until 2:30 p.m. (the Flash Crash occurred after 2:30 p.m.).
      - The triggers for each Level were reduced, as follows:
        - Level 1—7% decline in SPX:
          - Before 3:25 p.m., the market will close for 15 minutes
          - No Level 1 halts at or after 3:25 p.m.
        - Level 2—13% decline in SPX:
          - Before 3:25 p.m., the market will close for 15 minutes
          - No Level 2 halts at or after 3:25 p.m.
        - Level 3—20% decline in SPX:
          - The market will close for remainder

2:40 p.m. price. The other 14% of securities suffered greater declines than the broader market, with some trading all the way down to one penny. <https://www.sec.gov/sec-cftc-prelimreport.pdf>.

<sup>54</sup> At approximately 2:45 p.m., CME's Globex stop logic function initiated a five-second trading pause in the E-mini S&P 500 futures contract because of a rapid 5% decline in the contract's value.

<sup>55</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).

<sup>56</sup> From the joint CFTC/SEC report: "Use of the S&P 500 Index would lead to easier coordination with halts in the E-Mini and the SPY." In addition, using an index that correlates closely with derivative products, such as the E-mini S&P 500 futures contract or SPY, will allow for a better cross-market measure of market volatility.

<sup>57</sup> Many, if not all, equity markets have adopted rules requiring the receipt of LULD bands in non-listed symbols before reopening after MWCBC Halts.

of trading day, regardless of what time the trigger is reached

The MWCBC mechanism described above has remained substantively unchanged since it was implemented in 2012 with the Pilot Rules.

#### b. Evaluation of Halt Triggers and Length of Halts

The Exchange observes that since the inception of MWCBC trading halts in 1988, the pendulum has swung from wider triggers to narrower ones, then back to wider ones, and then to narrower ones again. In 1988, the two triggers were, based on DJIA point values of 250 and 400, 12% and 19% market declines, which were deemed to be too high. In 1997, the DJIA point value declines triggering halts were increased to 350 and 500, which represented declines of the DJIA of 5.4% and 8.5%. When the first ever MWCBC halt was triggered in October 1997, the industry concluded that the halt trigger of a 4.5% decline from the then reference (DJIA) and "close for the day" trigger of a 7% decline to be too low. The triggers were then increased to 10%, 20% and 30%. But in May 2010, when the Level 1 trigger was not breached after a 9% drop, the industry determined, in effect, to split the difference and lower the trigger levels to the current 7%, 13%, and 20% levels.

In 2016, the Equity Market Structure Advisory Committee's ("EMSAC") Subcommittee on Market Quality questioned whether the 7% decline for triggering for a Level 1 halt should be changed back to the previous trigger of 10%:

[The Subcommittee] . . . considered evidence in international markets that having a circuit breaker often acts as a magnet rather than a cushion. There is some evidence from China that when markets began to approach the 7% band, selling pressure intensified as market participants tried to get their trades in before the market was closed. As such the Subcommittee feels that a wider band around the 10% range is warranted.<sup>58</sup>

The Exchange concurs with the Working Group's conclusion that experience suggests that such a change is unnecessary. Since 1962, intraday losses as large as 7% have been rare in SPX, occurring just 16 times from the prior day close to next day's low. The only four times it did occur since the implementation of the LULD Plan was on the four dates in March 2020 that triggered the MWCBC Halts.

Since the LULD Plan was implemented, there have been only five

<sup>58</sup> <https://www.sec.gov/spotlight/emsac/emsac-market-quality-subcommittee-recommendation-072516.pdf>.



days where the SPX fell as much as 6%, and all took place during the March 9—March 18 period. On March 11, the index fell as much as 6.07%, but did not continue lower to trigger a Level 1 MWCB halt at 7%. On March 16, SPX declines triggered a Level 1 halt, and continued to fall after reopening to a low of -12.18%, but did not continue to fall to the 13% trigger for a Level 2 halt. Furthermore, on March 9, 12, and 18, SPX experienced further losses after the Level 1 halt, with intraday lows of -8.01%, -9.58%, and -9.83%. The fact that SPX continued to decline after the halt at 7% suggests that the market found an equilibrium level that was not particularly tied to the 7% Level 1 trigger or the 13% Level 2 trigger.

Accordingly, the Working Group concluded, and the Exchange agrees, that the available evidence does not support the conclusion that the current 7% and 13% triggers create a “magnet effect.” The sole member of the Working Group who was also a member of the EMSAC Subcommittee agreed that, with the benefit of actual data and a review of the March 2020 activity, there is no evidence of possible selling pressure or a need to raise the trigger for a Level 1 MWCB halt to 10% from the current 7%. The Working Group did not draw any conclusions about whether a “magnet effect” exists when market declines approach 20% (the Level 3 MWCB trigger that would end trading for the remainder of the day), given the lack of data.

As noted above, CME implemented the Task Force recommendation to reopen the E-mini S&P 500 futures five minutes before the end of a 15-minute Level 1 or Level 2 MWCB halt, in order to enhance the equity market price discovery process. Given that change, the Working Group opted not to simultaneously recommend a change to the length of the Level 1 and 2 MWCB Halts. The Exchange shares the Working Group’s view.

#### c. Evaluation of the Reference Value

During the Spring and Summer of 2020, the MWCB Task Force conducted a preliminary evaluation of whether SPX is the appropriate reference for the MWCB mechanism. The Task Force met with representatives of S&P DJI, who provided a presentation explaining their redundancy and resiliency protections for the SPX calculation, as well as supporting documentation. The Task Force concluded at that time that there was no immediate need to replace SPX as the reference value.

In late 2020 and early 2021, the Working Group revisited the issue and performed additional analysis regarding

whether to retain SPX as the reference for triggering MWCB halts. The Working Group examined criteria for considering an instrument or methodology to replace SPX and compared a number of potential alternatives to SPX.

Specifically, the Working Group considered the following alternatives through various “lenses” noted below:

#### *Potential alternatives to SPX considered:*

- DJIA
  - S&P 100 (“OEX”)
  - Nasdaq 100 (“NDX”)
  - Russell 1000 (“R1000”)
  - Russell 3000 (“R3000”)
  - Wilshire 5000 (“W5000”)
  - E-Mini S&P 500 Futures
  - Exchange Traded Products related to SPX/E-Mini (*i.e.*, SPY, IVV, VOO)<sup>59</sup>
- “Lenses” for considering potential alternatives:*
- Breadth of securities in an index or in the index underlying a specific product
  - Breadth of sectors represented by product/index
  - Breadth of listing exchanges represented by product/index
  - Correlation with related products, including derivatives and ETPs
  - Does the reference value demonstrate dislocations from the underlying value?
  - Industry awareness of the index/product level
  - Activity level in/liquidity generally present in the product (or correlated products if reference value is an index)
  - If reference value is a traded product, susceptibility of that product to short term liquidity imbalances that might erroneously trigger a MWCB
  - Potential concerns regarding cross-market coordination
  - Whose regulatory purview does the reference value fall under
  - Reference calculation method
  - Index methodology

After evaluating a number of different potential references assessed by the Working Group,<sup>60</sup> the Exchange concludes that SPX remains an appropriate product to use as the reference for the MWCB mechanism, and does not recommend making a change, for the following reasons:

- The industry practitioners in the Working Group strongly believe that the reference should be based on an index rather than an individual tradeable product (whether a derivative or an

<sup>59</sup> Note that while the analysis below focuses on SPY—the related ETP with the largest AUM—the Exchange believes that the assessment would be comparable for IVV or VOO.

<sup>60</sup> See Study, *supra* note 22, at 41.

ETP) because individual products are vulnerable to temporary order imbalances or price shocks, which may result in transient premiums or discounts.<sup>61</sup> In addition, individual products may themselves be subject to single stock price bands or circuit breakers. An index has far less potential to be influenced by these factors than an individual product.

- Of the indices the Working Group examined, the Exchange notes that SPX contains a large number of securities with a high degree of breadth, an extremely high correlation with the liquidity of its underlying securities, and a well-understood calculation methodology. S&P DJI disseminates documentation regarding the calculation of SPX, especially at and around market open and reopen that addresses technical questions regarding the index calculation and value dissemination.<sup>62</sup> The Exchange recognizes the lack of regulatory oversight of non-traded products, but nevertheless believe that SPX is an appropriate reference given the numerous safeguards provided by S&P DJI.<sup>63</sup>

- The Exchange notes that S&P DJI periodically improves its calculation methods for SPX. For example, following the events of August 24, 2015, S&P DJI changed its methodology for calculating SPX to use consolidated prices.<sup>64</sup> This change likely helped to ensure that SPX accurately reflected

<sup>61</sup> For example, on December 21, 2020, at 1:25 p.m., a sudden influx of Intermarket Sweep Orders caused a flash surge in SPY, resulting in a price jump from around \$365.00 to \$378.46, and back down to \$367.50 in less than one second. <https://www.bloomberg.com/news/articles/2020-12-23/flash-surge-in-world-s-biggest-etf-linked-to-outlandish-trades>.

<sup>62</sup> S&P DJI’s Equity Indices Policies & Practices Methodology, <https://us.spindices.com/governance/methodology-information/>. The rules governing the S&P 500 are available in the S&P U.S. Indices Methodology and published at <https://us.spindices.com/indices/equity/sp-500>.

<sup>63</sup> See *id.* regarding disclosure from S&P DJI. On May 17, 2021, following the completion of the Working Group’s Study, the Commission charged S&P DJI with securities law violations stemming from S&P DJI’s use of an undisclosed feature with respect to its S&P 500 VIX Short Term Futures Index ER. See <https://www.sec.gov/news/press-release/2021-84>. The Exchange has reviewed that enforcement action and has determined that it does not change its conclusion that SPX remains an appropriate reference value for the MWCB mechanism. As noted, no other index has a calculation method as well-understood as SPX, or has SPX’s number and breadth of securities. In addition, as noted, S&P DJI has been extremely transparent and responsive to the Exchange and the other Working Group members about the calculation of SPX.

<sup>64</sup> <https://www.prnewswire.com/news-releases/sp-dow-jones-indices-announces-changes-to-us-indices-intraday-calculations-300228793.html>.

market conditions preceding the MWCB Halts in March 2020.

In addition, the Exchange notes that S&P DJI was forthcoming and transparent in responding to the Working Group's questions about the resiliency and redundancy of the SPX calculation. In meetings with the Working Group, S&P DJI confirmed that it supports three data centers—in New Jersey, Chicago, and London—with two output nodes per center. Each of the three data centers independently calculates SPX, and S&P DJI monitors for consistency of values. Alerts are generated if these values are not consistent the three data centers. Should there be an issue with the feed from any one node, S&P DJI can switch over to a different node within the site or to a new site. S&P DJI conducts ongoing tests between their three data centers, and performs independent internal SPX modeling to detect any aberrations.

The Exchange did consider the fact that, while S&P DJI's index computations are conducted and made available from all three geographic locations with delivery through separate communications lines, there is no completely independent backup maintained for SPX, which remains a single point of failure. S&P DJI has responded that it intends to establish an independent index calculation to be conducted and maintained by a separate, independent entity thus further reinforcing redundancy and resiliency of the calculation.

For the foregoing reasons, the Working Group concluded, and the Exchange agrees, that SPX remains an appropriate product to use as the MWCB reference. Neither the Working Group nor the Exchange recommend changing to another index or product as a reference value.

#### 4. The Change Implemented in Amendment 10 to the Plan To Address Extraordinary Market Volatility (the "Limit Up/Limit Down Plan" or "LULD Plan") Did Not Likely Have any Negative Impact on MWCB Functionality

The Working Group concluded that the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the "Limit Up/Limit Down Plan" or "LULD Plan") did not likely have any negative impact on MWCB functionality. The Exchange adopts and agrees with this conclusion, for the reasons set out below and in the Study.

The Working Group considered the number of LULD Trading Pauses experienced on days with MWCB Halts, noting that the elimination of double-

wide bands for all securities during the first 15 minutes of trading went into effect on February 24, 2020. On March 9 and March 12—the first two days with early morning MWCB Halts—there were a combined 101 LULD pauses, only three of which were symbols included in the S&P 500. Of the stocks that had a LULD Trading Pause, 47 were in symbols that opened on a trade, while 54 opened on a quote.

The Working Group also considered whether fewer LULD Trading Pauses would have occurred if exchanges had used the midpoint of opening quotes as the reference price for LULD Trading Pauses instead of using the previous night's closing price (*i.e.*, reversing the change that was implemented in Amendment 10 to the LULD Plan). Of the 101 LULD Trading Pauses on March 9 and March 12, 31 symbols paused within the first 30 seconds, which might have indicated that the prior day's closing price was stale. Of those 31 symbols, however, 15 in fact opened on a trade, indicating that the LULD Trading Pauses were based on Price Bands calculated from same-day trades.

The fact that S&P 500 symbols virtually always open with a trade makes the use of SPX for triggering a MWCB Halt preferable as compared with using a wider index, which may have more component securities paused in LULD Trading Pauses. This led the Working Group to conclude that it was unlikely that the Amendment 10 change had any negative impact on MWCB functionality.<sup>65</sup> The Exchange agrees with this analysis and conclusion.

#### 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.

The Working Group concluded that 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. The Exchange adopts and agrees with this conclusion, for the reasons set out below and in the Study.

Since three of the MWCB halts were triggered within the five minutes of the 9:30 a.m. start of regular trading hours and before all stocks had opened for regular trading, the Task Force that reviewed these issues in the Summer of 2020 focused on issues relating to the appropriateness of halting the market so soon after its opening. The Task Force considered various theoretical ways to modify the MWCBs such that a halt

could be bypassed close to the cash opening. These included:

- Beginning the covered period at a later time, such as 9:45 a.m.;
- Relying on the futures market as being indicative of a 7% level having been breached in advance of the cash open and halting only if the market declines 13%; and
- Using a higher trigger for an initial period, *e.g.*, the first 15 minutes after the open.

At that time, the Task Force did not recommend any modifications of the MWCB process around the open. While several Task Force members initially questioned after the March 9 MWCB event whether halts so early in the day made sense, their views evolved as additional halts occurred over the next two weeks. With the experience of several halt events behind them, market participants became familiar with the mechanism and understood the transparency, certainty, and simplicity that it provides. The Task Force's inquiry subsequently involved identifying whether there were compelling reasons to deviate from the current system that offers familiarity, certainty, and simplicity, such that changing to an unfamiliar, untested, and more complex system could be justified.

Based on its review of the operation of the three MWCB events near the opening of regular trading hours, the Task Force concluded that the current process was not causing any harm that would have justified moving away from it. Specifically, the Task Force concluded:

- Leaving the markets unprotected (or less protected) for the first 15 minutes was not the right outcome for investors, particularly as the first 15 minutes of the day are often the most volatile, and/or when technology issues arise.

• Market participants are already accustomed to the behavior of MWCBs starting at 9:30 a.m. Implementation of any changes would lead to additional market structure complexity and introduce new operational risk to the markets.

- While market volatility in March 2020 may have been discernable before the opening of regular trading hours, which allowed market participants time to prepare for the event, future scenarios may unfold in a manner that is not so easily anticipated—such as when the market moves in response to news breaking right at the open.

The Task Force also noted that the 5% limit-down trigger on the E-mini S&P 500 futures contract limited price transparency at a critical time by preventing the market from more definitively knowing whether the

<sup>65</sup> See [https://www.sec.gov/dera/staff-papers/white-papers/dera\\_wp\\_effect\\_of\\_amendment\\_10\\_of\\_luld\\_pilot\\_plan](https://www.sec.gov/dera/staff-papers/white-papers/dera_wp_effect_of_amendment_10_of_luld_pilot_plan).

futures market was trading at a level that indicated an expected 7% halt in the equities market upon their opening. The Task Force, which included representation from CME, believed that it would be beneficial for the limit-down trigger for the E-mini S&P 500 futures contract to be moved to a 7% decline (from 5%) before the equities market open, for the following reasons:

- The E-mini S&P 500 futures contract is the most liquid instrument; a higher limit-down trigger would enhance price discovery and give more certainty to the equity market open; and
- Better alignment of the various traded instruments (*e.g.*, SPY) would enhance price discovery and lead to a more stable opening process.

As such, the Task Force recommended that CME consider moving the limit-down trigger for the E-mini S&P 500 futures contract to a 7% decline, as an initial step. As noted above, CME in fact implemented this recommendation on October 12, 2020. This CME change further reinforced the view that making additional changes to either the 7% MWCB level for equities or changing the time at which the equities markets would begin measuring for MWCB Halts was not warranted.

The Working Group, in revisiting this question, spent considerable time looking at the effectiveness of the auctions that occurred close to the opening and observed the following:

- The auction pricing mechanisms operated effectively.
- The amount of marketable interest in the MWCB reopening auctions was sufficient.
- Effective price discovery occurred, as evidenced by lower post-auction volatility.
- Future scenarios may involve extraordinary volatility event/news at 9:29 a.m., making it preferable for the MWCB triggers to apply from 9:30 a.m. onward.

As a result, the Working Group did not recommend that changes be made to the MWCB halt process around the opening of regular trading hours. The Exchange adopts and agrees with this position.

The Exchange notes that in the 2012 approval order for the Pilot Rules,<sup>66</sup> the Commission queried whether a MWCB should be triggered if a sufficient number of single-stock circuit breakers or LULD price limits were triggered. The Working Group considered this query but concluded, and the Exchange agrees, that “[t]he LULD Trading Pause data prior to the four MWCB halts in March 2020 does not shed light on the issue.

The four March 2020 MWCB halts were preceded by very few LULD Trading Pauses.”<sup>67</sup> The Working Group noted, and the Exchange agrees, that those events “do not foreclose the possibility . . . that future MWCB Halts may be preceded by numerous LULD Trading Pauses, or that a future episode of numerous LULD Trading Pauses may prompt inquiry into whether a MWCB Halt should have occurred.”<sup>68</sup>

#### Recommendations of the Working Group

In light of the foregoing conclusions and analysis, the Working Group made four recommendations,<sup>69</sup> set out below, with which the Exchange agrees:

- The Pilot Rules should be made permanent without any changes.
- S&P DJI should establish an independent SPX calculation to be conducted and maintained by a separate, independent entity, to further reinforce redundancy and resiliency of the SPX calculation.
- All markets should take appropriate action to minimize the reporting of trades to the SIP after the imposition of a MWCB halt.
- U.S. exchanges 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.

#### Proposal To Make the Pilot Rules Permanent

Consistent with the Working Group’s recommendations and the Exchange’s analysis above, 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 October 18, 2021. The Exchange does not propose any changes to paragraphs (a)–(d) of the Rule.

Regarding the Working Group’s additional recommendation that SROs adopt a rule requiring all designated Regulation SCI firms to participate in at least one MWCB test each year, the Exchange already requires such participation, as specified in Rule 48(c). In light of the Working Group’s recommendation, with which the Exchange agrees, that such MWCB testing rules contain additional specificity about a member organization’s attestation regarding such testing, the Exchange proposes to both

move this testing obligation from Rule 48(c) to new paragraph (e) of Rule 7.12 and incorporate the recommendations of the Working Group, as follows:

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

1. Member organizations designated pursuant to paragraphs (b)(1) and (3) of Rule 48 to participate in Exchange Backup Systems and Mandatory Testing are required to participate in at least one 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 orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior. 2.

2. Member organizations not designated pursuant to standards established in paragraphs (b)(1) and (3) of Rule 48 are permitted to participate in any MWCB test.

#### Implementation Date

The Exchange proposes that these changes would go into effect on October 19, 2021, the day after the expiration of the pilot status of the Pilot Rules.

#### 2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,<sup>70</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>71</sup> 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

<sup>67</sup> Study, *supra* note 22, at 46.

<sup>68</sup> *Id.*

<sup>69</sup> *See id.* at 46.

<sup>70</sup> 15 U.S.C. 78f(b).

<sup>71</sup> 15 U.S.C. 78f(b)(5).

<sup>66</sup> *See* Pilot Rules Approval Order, *supra* note 4.

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 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, which the Exchange already requires. In approving Rule 48(c) (which was then numbered Ruel [sic] 49(c)), the Commission noted:

The Commission believes that amending NYSE Rule 49 to require certain member organizations to participate in scheduled MWCB testing would enable the Exchange, participating member organizations, and others to assess the readiness of participating member organizations to respond in the event of unanticipated market volatility. Member organizations required to participate in MWCB testing pursuant to the proposal would be designated as such using the same standards used by the Exchange in determining which member organizations are subject to mandatory Regulation SCI testing. Because these member organizations have been designated by the Exchange as essential to the maintenance of a fair and orderly market, their demonstrated ability to halt and subsequently re-open trading in a manner consistent with the MWCB rules should contribute to the fairness and orderliness of the market for the benefit of all market participants. The Commission therefore believes that the proposal . . . is designed to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and to protect investors and the public interest.<sup>72</sup>

The Exchange believes that moving this testing obligation from Rule 48(c) to proposed Rule 7.12(e) and updating it to reflect the recommendations of the Working Group would remove impediments to and perfect the mechanism of a free and open market and a national market system by highlighting the MWCB testing obligation as a part of the MWCB rules at Rule 7.12. In addition, the Exchange believes that adding specificity, as recommended by the Working Group, that such Regulation SCI firms must attest to their participation in the MWCB testing 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.

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 MWCB Pilot Rules for the protection of the markets. The Exchange 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

<sup>72</sup> See Securities Exchange Act Release No. 83836 (August 13, 2018), 83 FR 41117 (August 17, 2018) (SR-NYSE-2018-31).

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, the Exchange understands that upon approval of this proposal, 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**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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. In addition, the Commission specifically requests comment on the proposed requirements for MWCB testing. The Exchange proposes to require Designated Market Makers and Supplemental Liquidity Providers that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis, will be required to participate in MWCB testing, though the Exchange may consider other factors in determining the member organizations that will be required to participate in testing. These market participants would be required to participate in at least one MWCB test each year and attest that they can send and receive

MWCB halt and resume messages, as well as receive and process market data from the SIPs relevant to MWCBs and send orders following a MWCB Level 1 or Level 2 event. The Commission notes that the proposed testing requirement is designed to assess whether the MWCB infrastructure works as designed. The proposed testing requirement, however, does not contemplate an ongoing assessment of whether the MWCB design (e.g., trigger thresholds, measurement criteria, time of day application) remains appropriate over time, as the market structure evolves, and under various threat scenarios. Do commenters believe that an ongoing assessment of the MWCB design should be conducted? If so, how could such an assessment meaningfully be conducted (e.g., tabletop exercises), understanding that it is difficult to replicate or forecast how market participant would behave during an actual MWCB event? Are commenters aware of ongoing assessment methods in other contexts (e.g., cybersecurity) that could inform how an ongoing assessment of the MWCB could be structured? How frequently should such an assessment be done?

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2021-40 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-NYSE-2021-40. 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-NYSE-2021-40 and should be submitted on or before August 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>73</sup>

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

[FR Doc. 2021-15548 Filed 7-21-21; 8:45 am]

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**DEPARTMENT OF STATE**

[Public Notice: 11470]

**Advisory Committee on Historical Diplomatic Documentation—Notice of Virtual Open Meeting**

The Advisory Committee on Historical Diplomatic Documentation will meet on August 30, 2021 in a virtual open session to discuss the status of the production of the *Foreign Relations* series and any other matters of concern to the Committee.

The Committee will meet in open session from 10:00 a.m. until noon through a virtual platform TBD. Members of the public planning to attend the virtual meeting should RSVP to Julie Fort at [FortJL@state.gov](mailto:FortJL@state.gov). RSVP and requests for reasonable accommodation should be sent not later than August 13, 2021. The platform type and instructions on how to join the virtual meeting will be provided upon receipt of RSVP. Note that requests for reasonable accommodation received after August 13 will be considered but might not be possible to fulfill.

Questions concerning the meeting should be directed to Adam M. Howard, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State,

<sup>73</sup> 17 CFR 200.30-3(a)(12).