

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93212; File No. SR-NYSE-2021-40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12

September 30, 2021.

I. Introduction

On July 2, 2021, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposal to make its rules governing the operation of the Market-Wide Circuit Breakers (“MWCBC”) mechanism permanent. The proposed rule change was published for comment in the **Federal Register** on July 22, 2021.³ On August 27, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed changes.⁵ The Commission has received no comments on the proposed rule change.

This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule changes.

II. Description of the Proposed Rule Changes

MWCBCs are coordinated, cross-market trading halts designed to operate during extreme market-wide declines to provide opportunities for markets and market participants to assess market conditions and systemic stress.⁷ Each cash equity exchange and options exchange has rules that govern the operation of these MWCBCs. These rules operate on a pilot basis. The current

pilot period was recently extended from October 18, 2021 to March 18, 2022.⁸

The MWCBC Pilot Rules 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”).⁹ 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.¹⁰ The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3).¹¹ 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.¹² 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.¹³

The NYSE’s MWCBC Pilot Rules also require all designated Regulation SCI firms to participate in at least one MWCBC test each year.¹⁴ Specifically, Regulation SCI Firms must attest that they are able to or have attempted to: (A) Receive and process MWCBC halt messages from the securities information processors (“SIPs”); (B) receive and process resume messages from the SIPs following a MWCBC halt; (C) receive and process market data from the SIPs relevant to MWCBC halts; and (D) send orders following a Level 1 or Level 2 MWCBC halt in a manner consistent with their usual trading behavior.¹⁵

The triggers provided for in the MWCBC Pilot Rules were triggered for the first time in March 2020 when MWCBC Level 1 halts occurred on March 9, 12, 16, and 18, 2020. In response to these events, a task force comprised of the SROs reviewed the events and concluded that the MWCBCs had performed as expected and recommended that no changes be made to the MWCBC rules.¹⁶ Subsequently, at the request of the Director of the Commission’s Division of Trading and Markets, the SROs and a “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 prepared a study, which includes a timeline of the MWCBC events in March 2020; a summary of the analysis and recommendations of the MWCBC Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCBC system; and the Working Group’s conclusions and recommendations.¹⁷

Based on the conclusions and recommendations reached by the Working Group after analyzing how the MWCBCs performed in March 2020, the Exchange proposed to transition the Pilot Rules to operate on a permanent basis without substantive change.¹⁸

III. Proceedings To Determine Whether To Disapprove SR-NYSE-2021-40 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change’s consistency with the Act¹⁹ and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchanges be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.²⁰

Under the Commission’s Rule of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 92785A, 86 FR 50202 (September 7, 2021).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Notice, *supra* note 3 at 38777.

⁸ See Securities Exchange Act Release No. 93203 (September 30, 2021).

⁹ See Notice, *supra* note 3 at 38777.

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

¹³ See *id.*

¹⁴ See *id.* at 38786.

¹⁵ See *id.*

¹⁶ See *id.* at 38778.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ 15 U.S.C. 78f(b)(5).

rule change.”²¹ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.²² Any failure of the SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and applicable rules and regulations.²³

As discussed above, the Exchange is proposing to make the current MWCBC Pilot Rules permanent, substantively without change, including the provision requiring systems testing by certain market participants. Specifically, 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, to participate in MWCBC 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 MWCBC test each year and attest that they can send and receive MWCBC halt and resume messages, as well as receive and process market data from the SIPs relevant to MWCBCs and send orders following a MWCBC Level 1 or Level 2 event. The proposed testing requirement, however, does not contemplate an ongoing assessment of whether the MWCBC design (e.g., trigger thresholds, measurement criteria, and time of day application) remains appropriate over time, as the market structure evolves, and under various threat scenarios, nor does it require the Exchange to participate in testing. The Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Do commenters believe that an ongoing assessment of the MWCBC design should be conducted as market structure evolves and under various threat scenarios? If so, how could such an assessment meaningfully be conducted, understanding that it is difficult to replicate or forecast how market participants would behave during an actual MWCBC event? How

frequently should such an assessment be done?

2. Are commenters aware of ongoing assessment methods in other contexts (e.g., cybersecurity) that could inform how an ongoing assessment of the MWCBC could be structured?

3. Should the Exchange be required to participate in a coordinated fashion in the operational test with the other SROs, report the results of their operational tests and periodic assessment of the MWCBC design to the Commission and inform the Commission of any concerns or proposed modifications concerning the MWCBCs?

For the reasons discussed above, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request or an opportunity to make an oral presentation.²⁴

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 26, 2021. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by November 9, 2021. The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal which are set forth in the Notice, in addition to any other

²⁴ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

comments they may wish to submit about the proposed change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-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 October 26, 2021. Rebuttal comments should be submitted by November 9, 2021.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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²⁵ 17 CFR 200.30-3(a)(57).

²¹ 17 CFR 201.700(b)(3).

²² See *id.*

²³ See *id.*