

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. All submissions should refer to File Number SR-CboeBYX-2020-008 and should be submitted on or before April 7, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88366; File No. 4-618]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Proposed Amendment to the Plan for the Allocation of Regulatory Responsibilities Between Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and Long-Term Stock Exchange, Inc. Concerning Covered Regulation NMS and Consolidated Audit Trail Rules

March 12, 2020.

On February 3, 2020, Cboe BZX Exchange, Inc. ("BZX"), Cboe BYX Exchange, Inc. ("BATS Y"), BOX Exchange LLC ("BOX"), Cboe Exchange, Inc. ("Cboe"), Cboe C2 Exchange, Inc. ("C2"), NYSE Chicago, Inc. ("CHX"), Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX"), Investors Exchange LLC ("IEX"), Miami International Securities Exchange, LLC ("MIAX"), MIAX PEARL, LLC ("MIAX PEARL"), MIAX Emerald, LLC ("MIAX Emerald"), The Nasdaq Stock Market LLC ("Nasdaq"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), NYSE National, Inc. ("NYSE National"), New York Stock Exchange LLC ("NYSE"), NYSE American LLC ("NYSE American"), NYSE Arca, Inc. ("NYSE Arca"), and Long-Term Stock Exchange, Inc. ("LTSE") (each, a "Participating Organization," and, together, the "Participating Organizations" or the "Parties"), filed with the Securities and Exchange Commission ("Commission" or "SEC") an amended plan for the allocation of regulatory responsibilities ("17d-2 Plan" or the "Plan"). The Plan was published for comment on February 25, 2020.¹ The Commission received no comments on the Plan. This order

approves and declares effective the Plan.

I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 ("Act"),² among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.³ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("Common Members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁴ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁵ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁶ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁷ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial

² 15 U.S.C. 78s(g)(1).

³ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁴ 15 U.S.C. 78q(d)(1).

⁵ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁶ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁷ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹ See Securities Exchange Act Release No. 88246 (February 20, 2020), 85 FR 10746.

²³ 17 CFR 200.30-3(a)(12).

responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.⁸ Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Amendment to the Plan

On February 3, 2020, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to: (i) Add Rule 613 under the Act and the rules of each Participating Organization related to Rule 613 listed on Exhibit A to the Plan (“SRO Covered CAT Rules”); and (ii) to reflect the name change of Nasdaq PHLX, Inc. to Nasdaq PHLX LLC.

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are members of more than one Participating Organization.⁹ The Plan provides for the allocation of regulatory responsibility according to whether the covered rule pertains to NMS stocks or NMS securities. For covered rules that pertain to NMS stocks (*i.e.*, Rules 607, 611, and 612), FINRA serves as the “Designated Regulation NMS Examining Authority” (“DREA”) for common members that are members of FINRA, and assumes certain examination and enforcement responsibilities for those members with respect to specified Regulation NMS rules. For common members that are not members of

FINRA, the member’s DEA serves as the DREA and “Designated CAT Surveillance Authority” (“DCSA”), provided that the DEA exchange operates a national securities exchange or facility that trades NMS stocks and the common member is a member of such exchange or facility. Section 2(c) of the Plan contains a list of principles that are applicable to the allocation of common members in cases not specifically addressed in the Plan. An exchange that does not trade NMS stocks would have no regulatory authority for covered Regulation NMS rules pertaining to NMS stocks. For covered rules that pertain to NMS securities, and thus include options (*i.e.*, Rule 606, Rule 613 and the SRO Covered CAT Rules), the Plan provides that the DREA will be the same as the DREA for the rules pertaining to NMS stocks and will serve as the DCSA. For common members that are not members of an exchange that trades NMS stocks, the common member would be allocated according to the principles set forth in Section 2(c) of the Plan.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the “Covered Rules”) that lists the federal securities laws, rules, and regulations, for which the applicable DREA would bear examination and enforcement responsibility, and for which the applicable DCSA would bear surveillance, investigation, and enforcement responsibility, under the Plan for common members of the Participating Organization and their associated persons.

Specifically, the applicable DREA assumes examination and enforcement responsibility, and the applicable DCSA assumes surveillance, investigation, and enforcement responsibility, relating to compliance by common members with the Covered Rules. Covered Rules do not include the application of any rule of a Participating Organization, or any rule or regulation under the Act, to the extent that it pertains to violations of insider trading activities, because such matters are covered by a separate multiparty agreement under Rule 17d–2.¹⁰ Under the Plan, Participating Organizations retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving their own marketplace.¹¹

III. Discussion

The Commission finds that the Plan, as amended, is consistent with the factors set forth in Section 17(d) of the Act¹² and Rule 17d–2(c) thereunder¹³ in that the proposed amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed amended Plan should reduce unnecessary regulatory duplication by allocating to the applicable DREA certain examination and enforcement responsibilities, and to the applicable DCSA certain surveillance, investigation, and enforcement responsibilities, for Common Members that would otherwise be performed by multiple Parties. Accordingly, the proposed amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because the Parties will coordinate their regulatory functions in accordance with the proposed amended Plan, the amended Plan should promote investor protection.

The Commission is hereby declaring effective a plan that allocates regulatory responsibility for certain provisions of the federal securities laws, rules, and regulations as set forth in Exhibit A to the Plan. The Commission notes that any amendment to the Plan must be approved by the relevant Parties as set forth in Paragraph 24 of the Plan and must be filed with and approved by the Commission before it may become effective.¹⁴

IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4–618. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Plan in File No. 4–618 is hereby approved and declared effective.

It is further ordered that the Parties who are not the DREA or DCSA as to a particular Common Member are relieved of those regulatory responsibilities allocated to the Common Member’s

¹² 15 U.S.C. 78q(d).

¹³ 17 CFR 240.17d–2(c).

¹⁴ See Paragraph 24 of the Plan. The Commission notes, however, that changes to Exhibit B to the Plan (the allocation of Common Members to DREAs) are not required to be filed with, and approved by, the Commission before they become effective.

⁸ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

⁹ The proposed 17d–2 Plan refers to these members as “Common Members.”

¹⁰ See Securities Exchange Act Release No. 86542 (August 1, 2019), 84 FR 38679 (August 7, 2019) (File No. 4–566) (notice of filing and order approving and declaring effective an amendment to the insider trading 17d–2 plan).

¹¹ See paragraph 3 of the Plan.

DREA or DCSA under the Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88360; File No. SR-NASDAQ-2020-003]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change To Amend Rule 4121(b)

March 11, 2020.

On January 14, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 4121(b) concerning the resumption of trading following a Level 3 trading halt due to extraordinary market volatility. The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.³ On March 6, 2020, the Commission extended the time period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

Rule 4121 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (“market-wide circuit breakers” or “MWCB”). The Exchange proposes to amend Rule 4121(b) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt.

Pursuant to Rule 4121, a market-wide trading halt will be triggered if the S&P

500 Index declines in price by specified percentages from the prior day’s closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading until the primary listing market opens the next trading day.

Currently, in the event that a Level 3 market decline occurs, the Exchange would halt trading for the remainder of the trading day, and would not resume until the primary listing market opens the next trading day. Thus, if the primary listing market is Nasdaq, the Exchange would resume trading in its listed securities at 4:00 a.m. ET on the next trading day, which is the beginning of the Exchange’s Pre-Market Session.⁵ Effectively, Nasdaq would open its listed securities for trading following a Level 3 halt the same as a regular trading day under its current MWCB Level 3 re-opening procedures.⁶ For non-Nasdaq listed securities, however, Nasdaq would resume trading once the primary listing market has re-opened the security for trading, which time may currently vary depending on the primary listing market.⁷

The Exchange now proposes that a Level 3 halt would end at the end of the trading day on which it is declared. This proposed change would allow for next-day trading to resume in all NMS Stocks no differently from any other trading day.⁸ To effect this change, the Exchange proposes to delete the language in Rule 4121(b)(ii) requiring the Exchange to wait until the primary listing exchange opens the next trading

day following a Level 3 market decline, and specify that the Exchange will halt trading for the remainder of the trading day.⁹ The proposed rule change would allow the Exchange to resume trading in all securities the next trading day following a Level 3 halt no differently than any other trading day, which for Nasdaq would be at the beginning of the Pre-Market Session at 4:00 a.m. ET under its current rules.¹⁰ The Exchange also expects that the primary listing exchanges will facilitate this change by sending resume messages to the applicable securities information processor (“SIP”) to lift the Level 3 trading halt message in all securities. The resumption messages will be disseminated after the SIP has started on the next trading day and before the start of the earliest pre-market trading session of all exchanges. If a security is separately subject to a regulatory halt that has not ended, the primary listing exchange would replace the Level 3 halt message with the applicable regulatory halt message.

The Exchange believes, based on industry feedback, that opening in the normal course in all equity securities as opposed to, for instance, having a normal opening for Nasdaq-listed securities only or conducting a halt auction prior to resuming trading, would be more beneficial to the marketplace. The Exchange states that by allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks and balances out potential concerns around volatility. The Exchange states that while it recognizes that the impact of this proposal is to permit all securities to be traded in the Pre-Market Session, which does not have certain price protections for volatility such as LULD Bands or MWCB protections, it nonetheless believes that this outcome is outweighed by the benefits provided by opening in the Pre-Market Session in a manner that is more familiar to the marketplace. The Exchange further states that allowing the resumption of

⁵ Pre-Market Session means the trading session that begins at 4:00 a.m. and continues until 9:30 a.m. See Rule 4120(b)(4).

⁶ The Nasdaq system begins accepting and processing eligible orders in time priority at 4:00 a.m. ET. See Nasdaq Rule 4752(b) for further description of trading in the Pre-Market Session.

⁷ There may be cross-market differences in how each exchange currently opens the next day after a Level 3 MWCB halt. While Nasdaq currently resumes trading in its listed securities no differently from a regular trading day, other exchanges may, for instance, conduct a halt auction process instead of opening in the normal course under their respective rules.

⁸ The Exchange anticipates that the other national securities exchanges and FINRA will also file similar proposals to amend their MWCB rules on the resumption of trading following Level 3 halts, and amend their rules, where required, to have their Level 3 next-day openings happen normally.

⁹ Presently, the Exchange’s equities trading day ends at 8:00 p.m. ET.

¹⁰ The Commission notes that the Exchange has coordinated this proposal with the other national securities exchanges and FINRA and expects that they will file proposals with the Commission to harmonize the MWCB rules and facilitate appropriately a cross-market resumption of trading following a Level 3 halt that is no different from any normal trading day.

¹⁵ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88004 (January 17, 2020), 85 FR 3992 (“Notice”).

⁴ See Securities Exchange Act Release No. 88342 (**Federal Register** publication pending).