April 22, 2024

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

RE: Twenty-Third Amendment to the National Market System Plan to Address Extraordinary Market Volatility, File No. 4-631

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] and SIFMA Asset Management Group ("SIFMA AMG")[2] respectfully submit this comment letter to the U.S. Securities and Exchange Commission (the "Commission") in response to the Commission's Order Instituting Proceedings ("OIP") regarding the proposed Twenty-Third Amendment (the "Twenty-Third Amendment") to the National Market System ("NMS") Plan to Address Extraordinary Market Volatility (the "Plan").[3] The Plan governs the Limit Up-Limit Down ("LULD") mechanism, which is designed to address extraordinary market volatility over short periods by preventing trades from executing outside of prescribed price bands.[4] In the Twenty-

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[3] Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Twenty-Third Amendment to the National Market System Plan to Address Extraordinary Market Volatility, Exchange Act Release No. 99545, 89 FR 13389 (February 22, 2024) ("OIP").

[4] The Plan is administered by the following self-regulatory organizations: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX Pearl, LLC, NASDAQ BX,

Third Amendment, the Plan Participants are seeking to amend the Plan to move most exchange-traded products ("ETPs") into the narrower price bands found in Tier 1 of the Plan. For the reasons set forth below, SIFMA and SIFMA AMG support the proposed Twenty-Third Amendment to the Plan and urge the Commission to approve it.

The Commission approved the Plan in 2012 as a pilot and made it permanent in 2019.[5] Since the Plan's inception in 2012, market participants and other interested parties, including SIFMA, have supported incremental improvements through the amendment process.[6]

Pursuant to the current LULD Plan, ETPs are assigned to one of the two price band Tiers based on calculations performed every six months of each ETP's notional value of consolidated average daily volume ("CADV"). ETPs with notional CADVs exceeding $2 million during the prior six months are assigned to Tier 1, while those below the $2 million threshold are assigned to Tier 2. This approach assumes that ETPs trading above $3.00 a share but with notional CADVs below $2 million have higher expected volatility and therefore require the wider price band in Tier 2.

In the Twenty-Third Amendment, the Plan Participants propose to eliminate the notional CADV threshold to determine ETP Tier assignments and instead assign all ETPs to Tier 1, except single-stock ETPs where the underlying security is in Tier 2. In addition, the Participants also are proposing that leveraged ETPs be adjusted by multiplying the relevant price band percentage by the leverage factor.

In support of the proposed amendment, the Participants provided a data study to Commission staff to help show how the proposal potentially would impact ETP market activity.[7] The data study suggests that, consistent with portfolio theory and contrary to the assumption on which the current approach is based, an ETP's notional CADV is not an appropriate measure of its expected volatility. Specifically, the data study analyzed all securities that were part of the Plan during 2021 and found that despite having notional CADVs below $2 million, the ETPs assigned to Tier 2 had quote volatilities lower than Tier 1 non-ETPs and significantly lower than Tier 2 non-ETPs.[8] The data study also found that Tier 2 non-leveraged ETPs trading above $3.00

Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the "Plan Participants").

[5] Order Approving the Eighteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility, Exchange Act Release No. 85623, 84 FR 16086 (April 17, 2019).

[6] See, e.g., Letter from SIFMA to Brent Fields, SEC, on Eighteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility, File No. 4-631 (January 16, 2019).

[7] Notice of Filing of the Twenty-Third Amendment to the National Market System Plan to Address Extraordinary Market Volatility, Exchange Act Release No. 98928, 88 FR 81131, 81133 (November 21, 2023) ("Notice").

[8] Id. at 81134.

a share had fewer Trading Pauses and Limit States than non-ETPs in Tiers 1 and 2.[9] Therefore, for Tier 2 ETPs other than single-stock ETPs with underlying securities in Tier 2, the Participants believe that applying the more narrow Tier 1 price band is appropriate based on the reduced volatility of those ETPs compared to individual securities in Tiers 1 and 2.

The Participants' data study also found that (1) applying the more narrow Tier 1 price band to ETPs currently assigned to Tier 2 would benefit investors by effectively preventing extraordinary price swings on volatile trading days, but would not create significant additional Limit States and Trading Pauses on most other days; and (2) market quality (i.e., spread divergence and notional amount of liquidity available at the inside market) would not diminish, and generally would improve, for ETPs currently in Tier 2.[10] In addition, the Participants assert that adoption of the Twenty-Third Amendment would reduce complexity and potential confusion by eliminating the requirement to calculate notional CADVs every six months, which in some cases causes ETPs to move back and forth between Tiers.

SIFMA and SIFMA AMG agree with the Participants that the data study supports approval of the proposed amendment.[11] SIFMA and SIFMA AMG also observe that many ETPs based on a single asset other than stocks (e.g., commodities or foreign currencies) are assigned to Tier 1 under the current LULD plan. For example, as of March 2024, a significant percentage of single asset commodity-based ETPs (approximately 33%) was assigned to Tier 1 based on the notional CADV measure, and these ETPs covered a wide range of commodity types. Similarly, there are several ETPs made up solely of currency products currently assigned to Tier 1. Therefore, there is no reason to expect the Tier 1 price band is inappropriate for ETPs that are based on a single asset other than stocks.

With respect to leveraged ETPs, SIFMA and SIFMA AMG note the proposal would account for potential price volatility in these products by multiplying the Tier 1 Percentage Parameters by an ETP's leverage ratio. Furthermore, this calculation method is consistent with the current approach to calculating the Percentage Parameters for leveraged ETPs assigned to Tier 2.[12]

Finally, SIFMA and SIFMA AMG note that pursuant to the Plan, Participants are required to provide the Commission, and make publicly available, annual and quarterly reports assessing

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[9] Id. at 81134-35.

[10] Id. at 81135-42.

[11] SIFMA and SIFMA AMG note that the Participants' proposal would have no practical impact on ETPs with a Reference Price below $3.00 per share throughout the trading day because Tiers 1 and 2 apply the same Percentage Parameters to NMS Stocks with a Reference Price below $3.00 per share. Similarly, the proposal would not impact ETPs priced above $3.00 per share during the last 25 minutes of the trading day, because Tiers 1 and 2 apply the same Percentage Parameter during that period. See 88 FR at 81146, 81148.

[12] See 89 FR at 13390.

the Plan's performance.[13] If the Commission adopts the Twenty-Third Amendment, plan participants and the Commission would be able to evaluate the effects of the amendment on market activity and quality in Tier 1 ETPs in connection with the required reviews and assessments.

For these reasons, SIFMA and SIFMA AMG agree with the Plan Participants that the Commission should approve the Twenty-Third Amendment because it would benefit investors by reducing complexity and enhancing fair and orderly markets for trading in ETPs.

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SIFMA and SIFMA AMG appreciate the opportunity to submit this letter to the Commission regarding the Twenty-Third Amendment. For the reasons set forth above, we urge the Commission to approve the amendment. If you have any questions or need any additional information, please contact Ellen Greene at (212) 313-1287 or Kevin Ehrlich at (202) 962-7336.

Sincerely,

Ellen Greene

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[13] <u>See</u> 88 FR at 81149-50.