

**MEMO# 35646**

March 14, 2024

# **ICI Submits Comment Letter Supporting Proposed Changes to Limit Up Limit Down NMS Plan to Categorize Most ETFs as Tier 1**

[35646]

March 14, 2024

TO: ICI Members

Equity Markets Advisory Committee

ETF (Exchange-Traded Funds) Committee SUBJECTS: Exchange-Traded Funds (ETFs)

Trading and Markets RE: ICI Submits Comment Letter Supporting Proposed Changes to Limit Up Limit Down NMS Plan to Categorize Most ETFs as Tier 1

On March 14, 2024, the ICI submitted a comment letter in support of the proposed amendments to the National Market System (NMS) Plan to Address Extraordinary Market Volatility (the "Plan") at issue in the SEC's order [\[1\]](#) instituting proceedings to determine whether to approve or disapprove such amendments. The Plan, in general, governs the market-wide limit up-limit down ("LULD") mechanism that sets forth procedures to prevent trades in individual NMS securities from occurring outside of specified price bands.

The proposed amendments would amend Appendix A to the Plan to provide that all exchange-traded products ("ETPs") be assigned to Tier 1 of the Plan, except for single stock ETPs which will be assigned to the same tier as their underlying stock, and in each case adjusted for any leverage factor. Appendix A currently provides that Tier 1 includes all NMS stocks included in the S&P 500 Index, the Russell 1000 Index, as well as "eligible" ETPs, with Tier 1 ETP eligibility covering non-leveraged ETPs that trade over \$2,000,000 notional consolidated average daily volume ("CADV") during a specified half year period. Non-eligible ETPs are classified as Tier 2. Tier 1 and Tier 2 classification results in different price bands for LULD trading halts, with Tier 1 ETPs having a 5% price band and Tier 2 ETPs having a 10% price band.[\[2\]](#)

ICI fully supports incremental and measured amendments to market structure that will further protect retail investors and strengthen investor reliance on US markets, which based on the submitted data the proposed changes will achieve. Further, ICI does not believe the proposed amendments would impose any burden on market competition. Actually, the proposed amendments may improve competition, as all ETPs, other than

single-security ETPs, will have consistent LULD parameters. Finally, in response to the SEC's question on leveraged ETPs, ICI emphasizes the importance of maintaining the leverage factor adjustment. ICI's reasoning underlying its support aligns with the letter previously submitted jointly by multiple market participants (the "Joint Letter"), and ICI strongly supports the arguments and rationale laid out in that letter.<sup>[3]</sup>

Kevin Ercoline  
Assistant General Counsel

#### Notes

<sup>[1]</sup> 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 by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., The Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX Pearl, LLC, NASDAQ BX, 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., Exchange Act Release No. 99545, 89 Fed. Reg. 13389 (Feb. 22, 2024), available at <https://www.sec.gov/files/rules/sro/nms/2024/34-99545.pdf>.

<sup>[2]</sup> These price bands apply to ETPs with a reference price of more than \$3. During the last 25 minutes of the trading day, the Tier 1 price band for securities with a reference price of more than \$3 increases to 10%. Price bands for Tier 1 and Tier 2 securities with a reference price of \$3 or less are the same, with the price bands being broader based on the security's reference price.

<sup>[3]</sup> Letter from Samara Cohen, Chief Investment Officer of ETF and Index Investments, BlackRock, et al., to Vanessa Countryman, Secretary, SEC (Dec. 18, 2023), available at <https://www.sec.gov/comments/4-631/4631-316879-826042.pdf>.