December 18, 2023

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

RE: Release No. 34-98928; File No. 4-631; Twenty-Third Amendment to the National Market System Plan to Address Extraordinary Market Volatility (Limit Up-Limit Down NMS Plan)

Dear Ms. Countryman:

We are writing to express our support for the Twenty-Third Amendment (the "Amendment 23") of the Limit Up-Limit Down NMS Plan (LULD or Plan). We represent a diverse cross-section of market participants who are committed to ensuring that equity market structure fosters fair and efficient markets and adequately protects investors. Amendment 23 provides that all exchange-traded products (ETPs) will 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. This updates the original design of LULD, whereby only those ETPs that trade over $2 million Notional Consolidated Average Daily Volume have been eligible for inclusion as Tier 1 NMS Stocks – a list that is updated semi-annually, with some ETPs moving between Tier 1 and Tier 2 at the start of each January and July.

LULD, first implemented in 2012, has generally performed as designed, having a positive impact on the quality of US equity markets. The mechanism protects investors from liquidity gaps by preventing trades from occurring outside of specified price bands, while accommodating fundamental price moves through security-specific pauses and reopening auctions. Key amendments to LULD have been implemented over the years, some in response to issues identified during the first hour of trading on August 24th 2015. The amendments have improved the operation and performance of LULD, and highlight the need to continually assess the efficacy of LULD for all national market stocks. Notable improvements widely supported by market participants have included Amendment 10, Amendment 12, and Amendment 18.

We view Amendment 23 as another incremental and logical refinement that will reduce unnecessary complexity in the Plan and benefit investors through improved ETP market quality. Therefore, we urge the Commission to approve Amendment 23.

Strengthening the ETP Investor Experience

Using Tier 1 Percentage Parameters for all ETPs would better protect investors during temporary liquidity gaps, which may be exacerbated by the wider price bands for Tier 2 NMS Stocks. The analysis included with Amendment 23 found that in most instances where an ETP trade would have been prevented by Tier 1 Percentage Parameters, prices reverted to levels better than the modelled Tier 1 Upper or Lower Price Band post-trade. The foregoing suggests that in such cases, preventing the errant trade and allowing time for liquidity to replenish within the Tier 1 Percentage Parameters may enhance investor protection and provide a better ETP execution experience for market participants.

ETP liquidity gaps can occur for reasons that may not reflect the ETP's fundamental value, such as outsized or aggressive orders, temporary uncertainty about any inputs into the calculation of the ETP's fair value, or lower levels of market participation, which is more common in newly listed ETPs. In these instances, the risk of an inefficient execution away from the fair value of the ETP's holdings (as far as 10% away from a Tier 2 ETP's reference price) rises. The application of Tier 1 Percentage Parameters would improve transparency and efficiency, particularly during periods of extreme volatility.

Moreover, in instances of sustained order imbalances and/or gaps in liquidity in the market for an ETP, a LULD trading pause would help attract liquidity from diverse market participants and promote price discovery through the reopening mechanism, helping to keep ETP prices in line with the value of underlying holdings.

While using Tier 1 Percentage Parameters for all ETPs may result in an increased number of LULD pauses, the impact would be mitigated by market participants adjusting to provide liquidity within the Tier 1 bands. Evidence from the adoption of Amendment 18 – which halved the LULD Percentage Parameters for all securities in the first 15 minutes of regular trading hours and for Tier 2 securities priced above $3.00 in the last 25 minutes of regular trading hours – showed that market participants adapted to the narrower Percentage Parameters. Amendment 18 did not result in a surge in the number of LULD trading pauses.

The data supporting Amendment 23 suggests that reclassifying Tier 2 ETPs into Tier 1 may benefit investors through improved ETP market quality. The analysis examined ETPs that changed LULD Tiers and found that ETPs that moved from Tier 2 to Tier 1 had lower quote volatility, tighter bid-ask spreads, and increased liquidity on average after the reclassification. While market quality improvements may be partly attributable to increased trading volume, it is notable that market quality also improved for ETPs that moved from Tier 2 to Tier 1 due to only a few high-volume days during the measurement period. These ETPs otherwise exhibited Tier 2 volume levels and returned to Tier 2 in the next period, thus evidencing that market quality improvements were not due to increased trading volume. Instead, these findings suggest that market participants adjust their trading and quoting behavior in response to the tighter bands. In light of the study results, we believe that the potential benefits to investors of applying Tier 1 LULD Percentage Parameters to ETPs justify the potential for a limited increase in LULD pauses.

As noted in the proposing release, ETPs were assigned to LULD Tiers based on an assumption that lower-volume ETPs were more suited for wider price parameters. The data included with Amendment 23 suggests that assumption was wrong. The analysis demonstrated that on average, Tier 2 ETPs across asset classes exhibit lower quote volatility than Tier 1 non-ETP stocks. Therefore, if LULD were designed based on the data that is now available, it is reasonable to assume that ETPs would have been assigned to Tier 1. In light of the findings derived from the study, the imposed semi-annual migration of ETPs from one tier to the other appears to be overly complex, arbitrary, and unnecessary.

We appreciate the extensive data analysis supporting Amendment 23 that was undertaken by the plan participants. We also appreciate that LULD requires the plan participants to produce Annual Reports that must include an analysis of any amendment implemented during the period covered by the report. This provides a useful and timely opportunity to review the impact of the amendment and to assess the need for further incremental refinement to LULD.

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We thank and appreciate the Commission’s continued focus on improving the operational integrity of the markets and enhancing the efficacy of volatility moderators such as LULD, and we look forward to continued engagement on this topic.

Sincerely,

/s/ Samara Cohen
Chief Investment Officer of ETF and Index Investments
BlackRock

/s/ Jason Clague
Managing Director
Charles Schwab & Co.

/s/ Omar Aguilar
President & CEO
Charles Schwab Investment Management, Inc.

/s/ Joseph Mecane
Head of Execution Services
Citadel Securities

/s/ Jim Gregory
Senior Director, Head of Business Development
ETF Global

/s/ Brandon Clark
SVP, Director of ETF Business
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/s/ William Stush
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/s/ David LaValle
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/s/ Reginald M. Browne
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/s/ Briton Ryan
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