

implementation date by Trader Update.⁹ Subject to effectiveness of this proposed rule change, the Exchange anticipates that the proposed change will be implemented in the second quarter of 2022.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade because the Directed Order would offer Participants access to additional trading opportunities by permitting them to designate orders submitted to the Exchange to be routed directly to a specified ATS for execution. The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market by offering Participants the option to send orders that they wish to route to an alternate destination for execution through the Exchange, which would create efficiencies to the extent Participants are able to leverage existing protocols and specifications. Finally, the Exchange notes that the proposed functionality is not novel, as both the Exchange and other exchanges offer their members functionality whereby an exchange routes orders on behalf of a member to a specified trading center without such order interacting with the exchange's book.¹²

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed

rules governing Directed Orders would promote competition because they would provide for an order type on the Exchange that would facilitate additional trading opportunities for market participants. The Exchange further believes that the proposed rules would allow it to offer Participants functionality similar to order types and routing options that exist on other equities exchanges, thereby enabling the Exchange to compete with such exchanges.¹³

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-NYSECHX-2022-06 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-NYSECHX-2022-06. 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-NYSECHX-2022-06 and should be submitted on or before May 31, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94838; File No. SR-NASDAQ-2022-017]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 to Proposed Rule Change To Modify Equity 4, Section 4120 To Add Categories of Regulatory and Operational Halts, To Reorganize the Remaining Text of the Rule, and To Make Conforming Changes to Related Rules

May 3, 2022.

On February 22, 2022, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

⁹ The Exchange will also provide information regarding the ATS(s) to which a Directed Order may be designated to route by Trader Update.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See notes 7 & 8, *supra*.

¹³ See note 8, *supra*.

¹⁴ 17 CFR 200.30-3(a)(12).

“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 modify Equity 4, Section 4120 to add categories of regulatory and operational halts, to reorganize the remaining text of the rule, and to make conforming changes to related rules. The proposed rule change was published for comment in the **Federal Register** on March 11, 2022.³ On April 21, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵

On April 29, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed. Amendment No. 1 is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Equity 4, Section 4120 to add categories of regulatory and operational halts and to reorganize the remaining text of the rule, and to make conforming changes to related rules.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with adoption of an amended Nasdaq UTP Plan proposed by its participants (“Amended Nasdaq UTP Plan”),⁶ Nasdaq is amending Rule 4120⁷ to integrate several definitions and concepts from the Amended Nasdaq UTP Plan and to reorganize the rule in light of Nasdaq’s experience with applying the rule over fifteen years as a national securities exchange. Nasdaq proposes to reorganize and amend Rule 4120 entitled Limit Up-Limit Down Plan and Trading Halts. The rule sets forth Nasdaq’s authority to halt trading under various circumstances. The Exchange is a participant of the transaction reporting plan governing Tape C Securities (“Nasdaq UTP Plan”).⁸ As part of these changes, Nasdaq will add categories of regulatory and operational halts, improve the rule’s clarity, adopt defined terms from the Amended Nasdaq UTP Plan and delete parts of the rule that are no longer needed. Last, Nasdaq is

⁶ On February 11, 2021, the Nasdaq UTP Plan participants filed Amendment 50 to the Plan, to revise provisions governing regulatory and operational halts. See Letter from Robert Brooks, Chairman, UTP Operating Committee, Nasdaq UTP Plan, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 11, 2021. The Nasdaq UTP Plan subsequently filed two partial amendments to the 50th Amendment, on March 31, 2021 and on April 7, 2021. The SEC approved the amendments on May 28, 2021. See Securities Exchange Act Release No. 34-92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (S7-24-89). The Amended Nasdaq UTP Plan includes provisions requiring participant self-regulatory organizations (“SROs”) to honor a Regulatory Halt declared by the Primary Listing Market. The provisions in the Nasdaq UTP Plan, and the plan for consolidation of data for non-Nasdaq-listed securities, the Consolidated Tape System and Consolidated Quotations System (collectively, the “CTA/CQS Plan”), include provisions similar to the changes proposed by the Exchange in this filing.

⁷ References herein to Nasdaq Rules in the 4000 Series shall mean Rules in Nasdaq Equity 4.

⁸ Each transaction reporting plan has a securities information processor (“SIP”) responsible for consolidation of information for the plan’s securities, pursuant to Rule 603 of Regulation NMS. The transaction reporting plan for Nasdaq-listed securities is known as The Joint Self-Regulatory Organization Plan Governing The Collection, Consolidation and Dissemination of Quotation and Transaction Information For Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis or the “Nasdaq UTP Plan.” Pursuant to the Nasdaq UTP Plan, the UTP SIP, which is Nasdaq, consolidates order and trade data from all markets trading Nasdaq-listed securities. The Exchange uses the term “UTP SIP” herein when referring specifically to the SIP responsible for consolidation of information in Nasdaq-listed securities.

updating cross references in other rules that are affected by the proposed changes.

Background

The Exchange has been working with other SROs to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues. These common standards are designed to ensure that events which might impact multiple exchanges are handled in a consistent manner that is transparent. The Exchange believes that implementation of these common standards will assist the SROs in maintaining fair and orderly markets. Notwithstanding the development of these common standards, Nasdaq will retain discretion in certain instances as to whether and how to handle halts, as is discussed below.

Every U.S.-listed equity security has its primary listing on a specific stock exchange that is responsible for a number of regulatory functions.⁹ These include confirming that the security continues to meet the exchange’s listing standards, monitoring trading in that security and taking action to halt trading in the security when necessary to protect investors and to ensure a fair and orderly market. While these core responsibilities remain with the primary listing venue, trading in the security can occur on multiple exchanges that have unlisted trading privileges for the security¹⁰ or in the over-the-counter market, regulated by the Financial Industry Regulatory Authority, Inc. (“FINRA”). The exchanges and FINRA are responsible for monitoring activity on the markets over which they have oversight, but also must abide by the regulatory decisions made by the Primary Listing Market. For example, a venue trading a security pursuant to unlisted trading privileges must halt trading in that security during a Regulatory Halt, which is a defined term under the proposed rules,¹¹ and may only trade the security once the Primary Listing Market has cleared the security to resume trading.

All SROs have rules that require them to honor a Regulatory Halt. Nasdaq, as a Primary Listing Market, also has rules

⁹ Nasdaq is proposing to adopt Primary Listing Market as a new term, defined in Nasdaq UTP Plan, Section X.A.8, as follows: “[T]he national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.”

¹⁰ In addition, securities may also be listed on the New York Stock Exchange (“dually-listed”). See Rules 5005(a)(11), 5220 and IM-5220.

¹¹ See proposed Rule 4120(a)(11).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 94370 (March 7, 2022), 87 FR 14071.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 94778, 87 FR 25069 (April 27, 2022). The Commission designated June 9, 2022 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

outlining the circumstances in which it will halt trading in its listed securities, including situations in which such halts are for regulatory purposes¹²—and therefore are applicable to all markets trading the security—or for operational purposes, which would not halt trading on other markets. However, the trading halt rules are not consistent across SROs. Consequently, events that might constitute a Regulatory Halt for securities listed on one Primary Listing Market theoretically might not be grounds for a Regulatory Halt in securities listed on another Primary Listing Market. Such inconsistency among exchange rules could lead to confusion in circumstances such as a cross market event, which could be deemed “Extraordinary Market Activity.”¹³

While the existing rule generally has worked as intended to afford the Exchange authority to initiate a Regulatory Halt in appropriate cases, Nasdaq’s experience is that the current rule may not contemplate some situations where a Regulatory Halt would help to maintain fair and orderly markets. For example, the current definition of “Extraordinary Market

¹² Nasdaq’s current Rule 4120 establishes a limited number of reasons for instituting a Regulatory Halt for a Nasdaq-listed security. These reasons are: To permit the dissemination of material news concerning a listed company (Rule 4120(a)(1)); with respect to an American Depository Receipt (“ADR”) listed on Nasdaq, where another U.S. or foreign exchange that lists the security or the security underlying the ADR imposes a Regulatory Halt on the security listed on its market (Rule 4120(a)(4)); where Nasdaq requests information from the issuer relating to material news, the issuer’s ability to meet Nasdaq’s listing standards, or to protect investors (Rule 4120(a)(5)); in the event that extraordinary market activity in the security is occurring, “such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security” that is “likely to have a material effect on the market for the security” and the Exchange believes it is “caused by the misuse or malfunction of an electronic quotation, communication, reporting or execution system operated by, or linked to,” Nasdaq or another market (Rule 4120(a)(6)); in the event of an initial public offering (“IPO”) (Rule 4120(a)(7)); with respect to an index warrant, under certain specified conditions, or when appropriate in the interests of a fair and orderly market (Rule 4120(a)(8)); with respect to certain “Derivative Securities Products” (defined in Rule 4120(b)(4)(A)) when certain pricing information concerning the instrument is not available or is not being disseminated to all market participants at the same time (Rules 4120(a)(9) and (10)); for securities not covered by the Limit Up-Limit Down Plan, in the event a single stock trading pause is triggered (Rule 4120(a)(11)); and for securities covered by the Limit Up-Limit Down Plan, in the event of a trading pause (Rule 4120(a)(12)).

¹³ The proposed definition of Extraordinary Market Activity encompasses a market event that affects multiple markets. See proposed Rule 4120(a)(2) (incorporating by reference Nasdaq UTP Plan, Section X.A.1. Thus, such cross-market events could be considered Extraordinary Market Activity.

Activity” focuses on events where trading occurs significantly away from pre-event market prices. However, there may be other situations where trading proceeds in an orderly fashion despite a computer error that causes duplicative orders, bad data or other erroneous information that could impact investors’ understanding of the market or their trading activity. The Exchange believes it would facilitate fair and orderly markets to give Primary Listing Markets greater flexibility to consider the facts and circumstances of each case and decide whether a Regulatory Halt is appropriate.

The complex and interconnected market structure in the United States also relies on consolidated market data processed and disseminated by the SIPs. In certain circumstances, the loss of this information or issues with the accuracy or timeliness of the information might cause a Primary Listing Market to determine that a trading halt is appropriate. The Exchange believes that further guidance in the rules will assist market participants in better understanding how various scenarios would be handled.

The Exchange believes that the cross-market proposed changes would address these concerns by: (1) Adopting uniform rules regarding the trigger points for regulatory trading halts in situations most likely to have an impact across markets and multiple listing venues; (2) addressing more scenarios in the uniform rule where a Primary Listing Market may need to implement a Regulatory Halt to maintain fair and orderly markets; and (3) adding provisions that apply to SIP-related issues to increase transparency into how these situations would be handled.

As noted above, the proposed changes that would be uniformly applied across SROs are those that relate to cross-market events as set forth in the Amended Nasdaq UTP Plan. However, there will still be situations where personnel at the Primary Listing Market will need to determine the impact of the cross-market event on the securities listed on its market and use discretion in deciding whether to halt trading in some or all securities during a cross-market event that affects securities listed on different markets. In making a determination as to whether to declare a Regulatory Halt for Extraordinary Market Activity, the Primary Listing Market will consider the totality of information available concerning the severity of the issue, its likely duration, potential impact on members and other market participants, and it will make a good-faith determination that the criteria for declaring a Regulatory Halt

have been satisfied and that a Regulatory Halt is appropriate.¹⁴ Moreover, the Primary Listing Market will consult, if feasible, with the affected Trading Center(s), other Plan Participants, or the Processor, as applicable, regarding the scope of the issue and what steps are being taken to address the issue. Exchanges may also declare a Regulatory Halt when it determines that it is necessary to maintain a fair and orderly market.¹⁵

While the Exchange and the other SROs intend to harmonize certain aspects of their trading halt rules, other elements of the rules will continue to be unique to each market. The Exchange believes that this is appropriate to reflect different products listed or traded on each market and the unique relationship of the Primary Listing Market to its listed companies. It is anticipated that these unique rules would most likely be invoked in cases where the Primary Listing Market’s decision on whether to institute a Regulatory Halt turns on specific information related to an individual security or issuer, such as the dissemination of news and the issuer’s ability to meet listing standards, rather than broader market issues stemming from Extraordinary Market Activity or loss of consolidated market data from a SIP.

In addition to the changes noted above, the Exchange is deleting provisions that are no longer needed and reorganizing the rule to improve its clarity. The Exchange is also making a handful of non-substantive changes to rule text to improve its clarity. The Exchange will implement all of the changes proposed herein in conjunction with other SROs implementing the necessary rule changes. The Exchange will publish an Equity Trader alert at least 30 business days prior to implementing the proposed changes.

Definitions

The Exchange proposes adding a definitions section as Rule 4120(a) to consolidate the various definitions that will be used in the Rule, some of which are taken from the Amended Nasdaq UTP Plan. Nasdaq is adopting the following terms from the Amended Nasdaq UTP Plan: “Extraordinary Market Activity,” “Material SIP Latency,” “Operating Committee,” “Operational Halt,” “Primary Listing

¹⁴ The Exchange will consider these factors for all Regulatory Halts, not simply those caused by Extraordinary Market Activity.

¹⁵ See proposed Rule 4120(a)(11) and Amended Nasdaq UTP Plan, Section X.A.10.

Market,” “Processor,”¹⁶ “Regulatory Halt,” “Regular Trading Hours,”¹⁷ “SIP Halt,” “SIP Halt Resume Time,” and “SIP Outage.” The definitions of “Derivatives Securities Product,” “IPO,” “Pre-Market Session” and “Required Value” have been moved into the definitions section from elsewhere in the current rule without change. The definition of “Post-Market Session” has been moved from elsewhere in the rule with a minor change deleting the alternative closing time of 4:15 p.m. as all securities traded on Nasdaq commence their closing cross process at 4:00 p.m.¹⁸

First, the Exchange proposes to add the definition of “Primary Listing Market”¹⁹ to Rule 4120, which will have the same meaning as in the Amended Nasdaq UTP Plan, Section X.A.8. As is currently the case under Rule 4120 and under the Nasdaq UTP Plan, all Regulatory Halt decisions are made by the market on which the security has its primary listing. This reflects the regulatory responsibility that the Primary Listing Market has for fair and orderly trading in the securities that list on its market and its direct access to its listed companies, which are required to advise it of certain events and maintain lines of communication with the Primary Listing Market. The proposed definition makes clear that if a security is listed on more than one market (a dually-listed security), the Primary Listing Market means the exchange on which the security has been listed the longest. This provision matches language used in the definition of “Primary Listing Exchange” in the Limit-Up Limit-Down Plan and will avoid conflict in the event of dually-listed securities.

Second, the Exchange proposes to replace the definition of “Extraordinary Market Activity” with a broader

¹⁶ The Exchange proposes to also define the term “SIP” to have the same meaning as the term “Processor” as set forth in the Amended Nasdaq UTP Plan. Because the terms “Processor” and “SIP” are also used throughout the Rules, at times, to apply to processors of information furnished pursuant to the Consolidated Tape Association Plan (“CTA Plan”), the term “Processor” may, in those applicable circumstances, refer to the processor of transactions in Tape A and B securities, as set forth in the CTA Plan.

¹⁷ The Exchange notes that pursuant to existing Rule 4120(b)(4), the Regular Market Session occurs until 4:00 p.m. or 4:15 p.m., and the Post-Market Session begins at 4:00 p.m. or 4:15 p.m.

¹⁸ As noted above, the Exchange is adopting several new terms that have the same meaning as those terms are defined in the Amended Nasdaq UTP Plan. Each of the national market system plans governing the single plan processors has identical definitions of these terms, thus there will be uniformity in the meaning of the terms among such plans as well as among the rules of the SROs.

¹⁹ See proposed Rule 4120(a)(9).

definition of the term taken from Section X.A.1. of the Amended Nasdaq UTP Plan.²⁰ The current rule establishes a three-part test for Extraordinary Market Activity:

(1) Extraordinary Market Activity must be occurring in the security—the sole example of such activity included in the rule is “the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer,” and

(2) The Exchange must determine that such Extraordinary Market Activity is likely to have a material effect on the market for the security, and

(3) The Exchange believes that either: (i) Such activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting or execution system operated by, or linked to, the Exchange; (ii) after consultation with another national securities exchange trading the security on an unlisted trading privileges basis, that such activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting or execution system operated by, or linked to, such other national securities exchange; or (iii) after consultation with FINRA regarding a FINRA facility trading the security, such activity is caused by the misuse or malfunction of such FINRA facility or an electronic quotation, communication, reporting, or execution system linked to such FINRA facility.

Although the single scenario in element (1) of the test is not exclusive, the Exchange believes that market participants would benefit from the inclusion of other scenarios that might constitute “Extraordinary Market Activity.” For example, experience indicates that significant market events do not always result in price dislocation. In some cases, trading may remain orderly. Moreover, price discovery—at least when measured by the absence of large price changes—may appear to be orderly, but in fact there may be confusion or information missing (e.g., quote or transaction information) that is important to participants. The absence of accurate information could make it difficult for market participants to properly confirm the positions they own, the impact of the event, or the correct prices for securities.

The proposed definition of Extraordinary Market Activity is the same definition in Section X.A.1. of the

²⁰ See proposed Rule 4120(a)(2).

Amended Nasdaq UTP Plan.²¹ The new definition updates and consolidates the terminology and broadens applicability of the term in comparison to the current definition, by making it clear that Extraordinary Market Activity may occur solely on the Exchange or multiple markets, referred to as “Trading Centers” in the proposed rule change. A “Trading Center,” which is defined in Rule 600(b)(95) of Regulation NMS, refers to a “national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” The Amended Nasdaq UTP Plan definition of Extraordinary Market Activity also explicitly refers to disruptions or malfunctions at a SIP or a member of a Trading Center, whereas the current rule, as discussed above, does not. To qualify as Extraordinary Market Activity, the event must have a “severe and continuing negative impact” on a market-wide basis on quoting, order, or trading activity or the availability of market information necessary to maintain a fair and orderly market.

The new definition of Extraordinary Market Activity also explains what constitutes a “severe and continuing negative impact.” In addition to the scenario in the current rule involving significant price movement, the proposed change adds two new scenarios to provide additional transparency to member firms:

- Duplicative or erroneous quoting, order trade reporting, or other related message traffic between one or more Trading Centers or their members; and
- The unavailability of quoting, order or transaction information, or regulatory messages, for a sustained period.

These problems may cause market participants to change their trading behavior or withdraw from the market

²¹ “Extraordinary Market Activity” means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, or transaction information for a sustained period.

entirely. When serious enough, this can affect the fair and orderly operation of the market. In determining whether to initiate a trading halt, Nasdaq would, as set forth in the Amended Nasdaq UTP Plan and in proposed Rule 4120(b)(2)(D), consider the totality of information available concerning the severity of the issue, its likely duration, potential impact on members and other market participants, and will make a good-faith determination that the criteria for declaring a Regulatory Halt has been satisfied and that a Regulatory Halt is appropriate. Therefore, the Exchange, acting as the Primary Listing Market, in consultation with the affected trading centers, other SIP Plan participants, or the Processor, as applicable, where feasible, will retain discretion to evaluate the magnitude of each situation to determine whether the event meets the definition of Extraordinary Market Activity.

As with the current rule, the three scenarios included by reference in the new definition would not be exhaustive. This enables the Primary Listing Market to act in the best interests of the market when confronted with unexpected events. However, the Exchange believes that the three scenarios included in the rule cover many of the most likely events that may occur. As is currently the case, the Exchange anticipates providing public notice of Extraordinary Market Activity as soon as it is practicable, with updates as necessary, to assist firms in monitoring the status of issues. These notices, coupled with the proposed rule, will assist participants by alerting them to the situations most likely to result in trading halts.

The third set of new proposed definitions would be specific to events involving the SIP. While Nasdaq recognizes that many events involving the SIP would also meet the definition of “Extraordinary Market Activity,” the Exchange believes that the critical role of the SIPs in market infrastructure factors in favor of additional guidance on how such events will be handled. The definitions of “SIP Outage,” “Material SIP Latency,” “SIP Halt Resume Time,” and “SIP Halt” are intended to provide additional guidance and specific processes to address this subset of potential market issues. In addition, the Exchange is proposing to define terms related to SIP governance needed in order to understand these definitions:

- “Processor” or “SIP”²² have the same meaning as the term “Processor” set forth in the Nasdaq UTP Plan,

namely the entity selected by the Participants to perform the processing functions set forth in the Plan. Because the terms “Processor” and “SIP” are also used throughout the Rules, at times, to apply to processors of information furnished pursuant to the CTA Plan, the term “Processor” and “SIP” may, in those applicable circumstances, refer to the processor of transactions in Tape A and B securities, as set forth in the CTA Plan.

- “SIP Plan”²³ is defined as the Nasdaq UTP Plan.

- “Operating Committee”²⁴ is defined as having the same meaning as in the Nasdaq UTP Plan, namely the committee charged with administering the Nasdaq UTP Plan.

The Exchange is proposing to adopt a category of Regulatory Halt, called a “SIP Halt,”²⁵ which will have the same meaning as that term is defined in Section X.A.11. of the Nasdaq UTP Plan, namely “a Regulatory Halt to trading in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency.” This new category of Regulatory Halt will address situations where the Primary Listing Market declares a Regulatory Halt in one or more securities as a result of a SIP Outage or Material SIP Latency (each is discussed below). While a SIP Halt may be declared in a single stock, Nasdaq anticipates that most events will impact multiple securities or even all securities with their primary listing on a particular market. Because of the complexities inherent in these types of halts, the Exchange is proposing special procedures for the halting and resuming of trading as a result of a SIP Halt. These are discussed in more detail later.

The Exchange is proposing to define a “SIP Outage”²⁶ as having the same meaning as in Section X.A.13 of the Amended Nasdaq UTP Plan. Specifically, the Exchange is proposing to define SIP Outage to mean a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processor, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the Processor and the Operating

Committee, determines that resumption of accurate data is expected in the near future.

Recent experience with events involving a loss of consolidated data from the SIP has shown that in many cases, the least disruptive outcome in the event of a brief interruption in data is to not halt trading in the affected securities if the market is fair and orderly. For example, in August 2013, Nasdaq halted trading in Nasdaq-listed securities due to an interruption in UTP SIP data due to uncertainty about the impact the loss of data would have on market participants. Although the UTP SIP successfully restarted the system within its primary data center and was operational within 17 minutes, the market remained halted for 3 hours at the request of market participants so that they could manage their books, clear stale orders and reconnect to the system. By contrast, the New York Stock Exchange (“NYSE”), benefitting from this prior experience, did not halt trading during a loss of CTA/CQS data in October 2014 and failed over to backup facilities within 30 minutes of the loss of SIP data. Because NYSE did not halt trading, firms did not need to reconnect and clear order books. As a result, the duration of the NYSE event—measured from loss of SIP data to end of the issue—was shorter and caused less disruption to the market even though the scope of the underlying problem that caused the loss of data from both SIPs was comparable.

At the direction of the Operating Committees, each processor has invested significant money and effort into improving the resiliency of the SIPs. This will increase the likelihood that SIPs will failover rapidly and commence disseminating valid data. Of course, there could still be situations where the failover does not work as expected, or the problem is not cured despite the redundancy available in the backup center. It is in these situations that the Exchange and the other SROs believe that the need for a SIP Halt is most likely to arise.

For this reason, the proposed definition focuses on the agreed time frames for an orderly failover. Emergency procedures applicable to the Processor provide that when a determination is made to failover to the secondary data center, the Processor shall endeavor to complete the failover within 10 minutes.²⁷

Accordingly, the Primary Listing Market would be expected to consider a SIP Halt in the event of the loss of SIP

²³ See proposed Rule 4120(a)(17).

²⁴ See proposed Rule 4120(a)(5).

²⁵ See proposed Rule 4120(a)(14).

²⁶ See proposed Rule 4120(a)(16).

²⁷ See https://www.utpplan.com/DOC/UTP_SIP_Emergency_Procedures.pdf.

²² See proposed Rule 4120(a)(10).

data once the loss in data extends or is anticipated to extend for a material period that exceeds the same agreed-upon 10 minute failover thresholds, unless the Primary Listing Market, in consultation with the Processor and the responsible Operating Committee, determines that resumption of accurate data is expected in the near future. The Exchange, in consultation with the other SROs, considered and rejected specifying a numerical time limit after which a SIP Halt would be required. Because of the significant impact a broad trading halt can have on market confidence, the Exchange believes Primary Listing Markets should retain discretion to consider the facts of the incident in evaluating a SIP Halt to avoid having to halt trading despite knowing that the SIP is about to resume data dissemination. Instead, the Primary Listing Market, in consultation with other SROs, SIPs and market participants where feasible, would continually re-evaluate whether a SIP Halt is appropriate and take action when, in its judgment, the thresholds in the definition have been passed. The Primary Listing Market retains discretion throughout the process to institute a Regulatory Halt in good faith—even within the 10 minute failover window—if trading appears disorderly, price discovery has been impacted, or it is otherwise in the interests of a fair and orderly market to halt trading.

In addition to situations where a SIP is no longer disseminating data, circumstances may arise where quotation or last sale price information from the SIP is delayed or stale due to a significant increase in latency. Minor latency in the data will always exist given the nature of a consolidated feed, where data from multiple markets is validated, normalized, consolidated and then distributed. However, significant latency can impact trading decisions and market confidence if participants are unsure whether data accurately reflects the current state of the market.

The Exchange is proposing to define “Material SIP Latency”²⁸ as having the same meaning as in Section X.A.5 of the Amended Nasdaq UTP Plan. Specifically, the Exchange is proposing to define Material SIP Latency to mean a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the Processor’s vendor lines, which delay the Primary Listing Market determines, in consultation with, and in accordance

with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future. In this regard, SIP Emergency procedures presently state that “SIP material latency refers to sustained latency of 100 milliseconds or greater for 10 minutes caused by a technical issue at the Processor.”²⁹ The Emergency Procedures have various escalation points to advise the Primary Listing Market, the Operating Committee, and market participants. Under the proposal, the Primary Listing Market, in consultation with the Operating Committee, would be responsible for determining when this latency has become a Material SIP Latency.

Because guidelines are designed as an early warning system to mobilize decision makers, many latency events that exceed the thresholds in the guidelines would not constitute Material SIP Latency resulting in a SIP Halt. Instead, the Primary Listing Market, in consultation with the Operating Committee, would be expected to evaluate the severity of the latency and its continued duration and consider whether the issue is likely to be resolved in the near future. As in the case of a SIP Outage, the Exchange, in consultation with other SROs, considered adopting fixed latency metrics in the rule, but for several reasons, it determined that this would be counterproductive. First, it could create situations where a SIP Halt is imposed even where resolution is imminent. Second, greater flexibility will enable the Exchange and other Primary Listing Markets to learn from experience about how various levels of latency affect trading. Fixed thresholds in the rule might also become outdated over time if latency levels drop due to system enhancements. Regardless of the thresholds, the Primary Listing Market always retains the authority to institute a Regulatory Halt if it determines, in good faith, a halt to be in the interests of a fair and orderly market.

The Exchange proposes to add a definition of “Regulatory Halt”³⁰ as having the same meaning as in Section X.A.10 of the Amended Nasdaq UTP Plan. Specifically, the Exchange has proposed to define Regulatory Halt to mean a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where

otherwise necessary to maintain a fair and orderly market.³¹ A Regulatory Halt includes a trading pause triggered by Limit Up-Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt. The new term Regulatory Halt consolidates the various reasons for such a halt that are enumerated in the proposed Rule 4120(b). In addition to the specific reasons, the rule would memorialize the Primary Listing Market’s ability to implement a Regulatory Halt where otherwise necessary to preserve a fair and orderly market.³² The definition also makes clear that market-wide circuit breakers, codified in Rule 4121, constitute a Regulatory Halt. These circuit breakers provide for coordinated cross-market trading halts designed to stop trading temporarily or, under extreme circumstances, close the markets before the normal close of the trading session.

Finally, the Exchange proposes to add a definition of “Operational Halt,”³³ which is defined as having the same meaning as in Section X.A.7 of the Amended Nasdaq UTP Plan. Specifically, the Exchange is proposing to define Operational Halt to mean a halt in trading in one or more securities only on the market declaring the halt. An Operational Halt is effective only on Nasdaq; other markets are not required to halt trading in the impacted securities. In practice, the Exchange has always had the capacity to implement operational halts in specified circumstances.³⁴ The proposed change would provide greater clarity on when an Operational Halt may be implemented and the process for halting and resuming trading in the event of an

³¹ The Exchange’s authority to declare a Regulatory Halt to maintain a fair and orderly market is explicitly included in the definition of Regulatory Halt. The Exchange will institute a Regulatory Halt if it makes a determination that it is necessary to maintain a fair and orderly market. The Exchange believes that the addition of this basis to declare a Regulatory Halt will protect investors by giving the Exchange explicit authority to act in unforeseen situations not covered by other provisions of Rule 4120.

³² As provided for in the Nasdaq UTP Plan, the Proposed Rule would permit the Exchange to declare a Regulatory Halt for a security for which it is the Primary Listing Market, in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.

³³ See proposed Rule 4120(a)(6).

³⁴ See By-Laws of the Nasdaq Stock Market LLC, Section 5 (“Authority to Take Action Under Emergency or Extraordinary Market Conditions”), available at https://listingcenter.nasdaq.com/assets/rulebook/nasdaq/rules/NASDAQ_Corporate_Organization_Nasdaq_LLC.pdf.

²⁹ See https://www.utplan.com/DOC/UTP_SIP_Emergency_Procedures.pdf.

³⁰ See proposed Rule 4120(a)(11).

²⁸ See proposed Rule 4120(a)(4).

Operational Halt. An Operational Halt is not a Regulatory Halt.³⁵

Regulatory Halt Types

The Exchange proposes to consolidate the various types of situations that form the basis for declaring a Regulatory Halt in Rule 4120(b). The proposed rule change would divide the situations that form the basis of the Exchange's authority to declare a Regulatory Halt in a security for which the Exchange is the Primary Listing Market into three categories: (1) As provided by the SIP Plans; (2) discretionary Regulatory Halts; and (3) mandatory Regulatory Halts.

The first category concerns situations enumerated in the SIP Plan, specifically related to a SIP Outage, Material SIP Latency, or Extraordinary Market Activity.

The second category provides the Exchange with discretion to declare a Regulatory Halt in situations described by the proposed rule, such as when the Exchange requests certain information from an issuer and for a security subject to an IPO. The Exchange believes that discretion in determining whether to impose a Regulatory Halt is appropriate because of the many facts and circumstances that must be considered by the Primary Listing Market in determining whether to halt trading. A rule establishing exact standards for a mandatory halt would risk forcing the Exchange to halt trading in circumstances where other facts may weigh against a halt, thereby forcing the Exchange to act in a way that is not in the best interests of the market. Alternatively, fixed standards could also prevent the Exchange from halting in circumstances where a Regulatory Halt would be appropriate. Instead, the proposed change would outline the types of scenarios where the Primary Listing Market may initiate a Regulatory Halt after consulting with the entities specified in the Amended Nasdaq UTP Plan, where feasible. However, there may be situations where such consultation may not be possible due to technical issues or time sensitivity. The proposed change would preserve the Exchange's ability to act in the best interests of the market in these

circumstances, consistent with the Amended Nasdaq UTP Plan.

As under the current rule, the proposed change continues to allow the Exchange to institute a Regulatory Halt in circumstances where the Exchange requests additional information from an issuer (current Rule 4120(a)(5) and proposed Rule 4120(b)(1)(B)(i)),³⁶ to allow for the dissemination of material news (current Rule 4120(a)(1) and new Rule 4120(b)(1)(B)(ii)); to facilitate the initiation of trading of an IPO (current Rule 4120(a)(7) and proposed Rule 4120(b)(1)(B)(iii)) and to protect a fair and orderly market in the trading of index warrants (current Rule 4120(a)(8) and proposed Rule 4120(b)(1)(B)(iv)). Proposed Rule 4120(b)(1)(B)(v), codified without material change from current Rule 4120(a)(9), gives the Exchange discretion to halt a series of Portfolio Depository Receipts, Index Fund Shares (as defined in Rule 5705), Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Managed Trust Securities (as defined in Rule 5711(a)–(h) and (j), respectively), or NextShares (as defined in Rule 5745) listed on Nasdaq if the Intraday Indicative Value (as defined in Rule 5705), for Portfolio Depository Receipts or Index Fund Shares, for derivative securities as defined in Rule 5711(a), (b), and (d)–(h), Rule 5711(j) for Managed Trust Securities, or Rule 5745 for NextShares) or the index value applicable to that series is not being disseminated as required, during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. It requires the Exchange to halt trading in these instruments no later than the beginning of trading on the day following the interruption to the dissemination of the Intraday Indicative Value or the index value if the interruption persists past the trading day on which it occurs. The Exchange would also retain discretionary authority to halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, Exchange Traded Fund Shares (as defined in Rule 5704), Managed Fund Shares, Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares,

Partnership Units, Trust Units (as defined in Rule 5711(i)), Managed Trust Securities, Currency Warrants (as defined in Rule 5711(k)), NextShares, or Proxy Portfolio Shares (as defined in Rule 5750) based on a consideration of the following factors: (A) Trading in underlying securities comprising the index or portfolio applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index or portfolio, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

Proposed Rule 4120(b)(1)(B)(vi) gives the Exchange discretion to halt trading in an American Depository Receipt (“ADR”) or other Nasdaq-listed security when the foreign securities exchange or market listing the security underlying the ADR or the Nasdaq-listed security or the regulatory authority overseeing such foreign securities exchange or market institutes a halt for regulatory reasons. The Exchange is deleting text that presently exists in the Rule covering ADR and other Nasdaq-listed security halts, at Rule 4120(a)(4), which references national securities exchanges instituting a halt for “regulatory reasons” because under the proposed new rules, a Regulatory Halt will be issued by the Primary Listing Exchange. If the other national securities exchange is the primary listing exchange and declares a regulatory halt, the security will be subject to a halt by the Exchange. Thus, such a halt on the Exchange will be mandatory. The proposed amended rule will consider only actions taken by a foreign exchange that halts the Nasdaq-listed security, or security underlying an ADR, on its market for regulatory reasons (foreign exchanges do not fall within the definition of a “primary listing market” and therefore their regulatory halts do not fall within the Amended Nasdaq UTP Plan's definition of Regulatory Halts). The Exchange will then assess the regulatory reasons underlying the halt on the foreign market and possibly initiate a Regulatory Halt.

Proposed Rule 4120(b)(1)(B)(vii) would permit the Exchange to declare a Regulatory Halt for a security for which it is the Primary Listing Market, in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market. This proposal incorporates an identical provision in the Nasdaq UTP Plan.

The third category of Regulatory Halts concerns situations in which it is mandatory that the Exchange must

³⁵ The Exchange notes that it proposes to amend the existing definition of the term “Post-Market Session” to clarify that it is a trading session that begins after “Regular Trading Hours”—a term that, in turn, is defined in the Nasdaq UTP Plan—and that such session begins at “approximately” 4:00 p.m. The addition of the term “approximately” reflects the fact that the Nasdaq Closing Cross, which precedes the Post-Market Session at 4:00 p.m., is not instantaneous. See Proposed Rule 4120(a)(7).

³⁶ As proposed, Rule 4120(b)(1)(B)(i) provides that the Exchange's determination regarding a trading halt would be made consistent with Section X.C of the Amended Nasdaq UTP Plan.

declare a Regulatory Halt. Proposed Rule 4120(b)(1)(C)(i) codifies without substantive modification the existing provisions of Rule 4120(a)(10) in situations where the Exchange becomes aware that the net asset value of a Derivative Securities Product (or the Disclosed Portfolio in the case of Managed Fund Shares, the Composition File in the case of NextShares, or in the case of Proxy Portfolio Securities, a Proxy Basket, or the Fund Portfolio) is not being disseminated to all participants at the same time. The Exchange is required to halt trading in the Derivative Securities Product when this occurs. Similarly, proposed Rule 4120(b)(1)(C)(ii) retains without substantive modification the existing rule with respect to the Limit Up-Limit Down Plan (current Rule 4120(a)(12)).³⁷ The Exchange proposes to make clear in Rule 4120(b)(1)(C)(iii) that a trading halt pursuant to extraordinary market volatility (market-wide circuit breakers), as is described in Rule 4121, constitutes a Regulatory Halt. Finally, the Exchange is incorporating Rule 4120(a)(13) into proposed Rule 4120(b)(1)(C)(iv). Rule 4120(a)(13) requires Nasdaq to halt trading in an Equity Investment Tracking Stock (as defined in Rule 5005) or Subscription Receipt (listed under Rule 5520) whenever Nasdaq halts or suspends trading in a security tracked by the Equity Investment Tracking Stock or the common stock into which the Subscription Receipt is exchangeable.

The Exchange is proposing to move or delete certain elements in the current list of situations that form the basis for declaring a Regulatory Halt in Rule 4120(a). First, the Exchange is deleting the current definition of Extraordinary Market Activity in Rule 4120(a)(6), which it proposes to replace with the updated and more extensive definition previously discussed. Second, the Exchange is proposing to delete current Rule 4120(a)(11), which establishes a trading pause in the event of large price moves in securities not covered by the Limit Up-Limit Down Plan.³⁸ As the Limit Up-Limit Down Plan is now fully implemented, this subsection is no longer necessary. In addition, the Exchange proposes moving existing Rule 4120(a)(2) and (a)(3) to proposed Rule 4120(b)(3) covering declaration of

a Regulatory Halt by a Primary Listing Market other than Nasdaq. These provisions are discussed in more detail below.

Initiating a Regulatory Halt

In coordination with the other SROs, the Exchange developed proposed Rule 4120(b)(2) to provide detailed and consistent rules on how a Primary Listing Market will initiate a Regulatory Halt. The process for initiating a Regulatory Halt is set forth in Section X.D of the Amended Nasdaq UTP Plan. First, the proposed rule makes clear that the start time of a Regulatory Halt is the time the Primary Listing Market declares the Halt, regardless of whether communications issues impact the dissemination of notice of the Halt. The Exchange's experience in prior events is that market participants need certainty on the official start time of the Halt. Under the proposed rule, the start time is fixed by the Primary Listing Market; it is not dependent on whether notice is disseminated immediately. This will avoid possible disagreement if the Halt time were tied to dissemination or receipt of notification, which may occur at different times. The Exchange recognizes that in situations where communication is interrupted, trades may continue to occur until news of the Halt reaches all Trading Centers. However, a fixed "official" Halt time will allow SROs to revisit trades after the fact and determine in a consistent manner whether specific trades should stand.

Currently, many Trading Centers and other market participants rely on automated, machine-readable trade halt messages disseminated by the SIP to automatically halt their order matching and order dissemination systems. While the Exchange disseminates these messages in other formats and posts the messages on its website, Nasdaq's experience is that these alternative means of communication have not been relied on by many market participants. Proposed Rule 4120(b)(2)(B) would provide advance notice in the manner set forth in the Amended Nasdaq UTP Plan. The Amended Nasdaq UTP Plan requires the Primary Listing Market to notify all other participants and the SIP using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Exchange. The Exchange also must take reasonable steps to provide notice to market participants if the SIP Processor is unable to disseminate notice of the Halt or the Primary Listing Market is not open for trading. In such case, the notice would include:

- Proprietary data feeds containing quote and last sale information that the Primary Listing Market also sends to the applicable SIP that is unable to disseminate the halt notices;

- Posting on a publicly available Exchange website; or

- System status messages that are disseminated to market participants who choose to sign up for the service.

The Exchange believes that market participants will benefit from additional sources of halt notifications that include machine readable and easily accessible communications for human traders and Nasdaq recommends that participants be prepared in advance to monitor multiple sources. Although it may take longer for participants to react to messages received in less automated formats, the use of multiple forms of dissemination will increase the likelihood that participants receive important information. It will also assist participants who do not subscribe to the Exchange's proprietary feeds in getting regulatory notices. As noted above, in situations where communication is interrupted the Exchange and other SROs would retain the ability to break trades that occurred after the start of the Regulatory Halt in appropriate circumstances (pursuant to rules governing clearly erroneous trades, at Equity 11, Rule 11890), thereby lessening the potential impact on participants that were delayed in halting trading. Plan participants must monitor several sources of regulatory notices so that they are aware of the imposition of a Regulatory Halt in situations where communication is interrupted; however, the failure of a Plan participant to do so will not prevent the Exchange from initiating a Regulatory Halt.

Proposed Rule 4120(b)(2)(C) also makes clear that, consistent with the Amended Nasdaq UTP Plan, except in exigent circumstances, the Primary Listing Market will not declare a Regulatory Halt retroactive to a time earlier than the notice of such halt. Feedback from market participants has been that it is very disruptive to trading when the Primary Listing Market sets the start of a trading halt for a time earlier than the notice of the halt.³⁹ Therefore, in almost all situations the trading halt will start at the time of the notice or at a point in time thereafter. However, the Exchange retains the authority to implement a retroactive halt to deal with unexpected and significant situations that represent exigent

³⁷ Current Rule 4120(a)(12)(G) ("If the Exchange is unable to reopen trading due to a systems or technology issue, it shall notify the Processor immediately") will be incorporated into proposed Rule 4120(b)(4)(A)(i)e.6. ("If the Exchange is unable to reopen trading due to a systems or technology issue, it shall notify the SIP immediately").

³⁸ By its terms, Rule 4120(a)(11) does not apply to rights and warrants, which are the only Nasdaq-listed securities that are not covered by the Limit Up-Limit Down Plan.

³⁹ As noted previously, the start of a Regulatory Halt is measured as the point in time when the Primary Listing Market declares the halt, regardless of whether there is a delay in dissemination of the notice or in receipt of the notice by participants.

circumstances. While it is difficult in advance to provide an exhaustive list of when retroactive application of a trading halt would be in the public interest, one situation where a halt was applied retroactively was when the Primary Listing Market erroneously lifted a Regulatory Halt. In that case, the Primary Listing Market instituted a Regulatory Halt retroactively so that it coincided with the time the original halt was lifted in error.

Consistent with Section X.C.2 of the Amended Nasdaq UTP Plan, Proposed Rule 4120(b)(D) states that in making a determination to declare a Regulatory Halt in trading any security for which the Exchange is the Primary Listing Market, the Exchange will consider the totality of information available concerning the severity of the issue, its likely duration, and potential impact on Members and other market participants and will make a good-faith determination that the criteria for declaring the Regulatory Halt have been satisfied and that a Regulatory Halt is appropriate. The Exchange will consult, if feasible, with the affected Trading Center(s), other SIP Plan Participants, or the Processor, as applicable, regarding the scope of the issue and what steps are being taken to address the issue.

Finally, consistent with Section X.C.2 of the Amended Nasdaq UTP Plan, Proposed Rule 4120(b)(2)(E) states that once a Regulatory Halt has been declared, the Exchange will continue to evaluate the circumstances to determine when trading may resume in accordance with its Rules.

Nasdaq notes that except as otherwise stated, the proposed procedures for initiating Regulatory Halts replace those set forth in current Rule 4120(c).

Regulatory Halt Initiated by Other Markets

The Exchange believes that consolidating all subsections concerning a Regulatory Halt declared by other Primary Listing Markets in Rule 4120(b)(3) would add clarity to the rule. As is the case under the current rule, the Exchange would honor a Regulatory Halt.

- Current Rule 4120(a)(2), which states that the Exchange may halt trading on Nasdaq in any security it trades on an unlisted trading privileges basis, if the Primary Listing Market declares a Regulatory Halt in the security to permit dissemination of material news, would become proposed Rule 4120(b)(3)(A)(i). Consistent with Section X.G of the Nasdaq UTP Plan, the proposed Rule will more broadly require Nasdaq to halt trading of a UTP security if the Primary Listing Market

declares a Regulatory Halt in that security.

Current Rule 4120(b), which governs trading halts in certain Derivative Securities Products traded on the Exchange pursuant to unlisted trading privileges, would become proposed Rule 4120(b)(3)(A)(ii). Subsection (b)(3)(A)(ii) would replace the term “Regular Market Session” with the term “Regular Trading Hours” to stay consistent with other portions of the proposed rule. The change is non-substantive and would still refer to the period between 9:30 a.m. and 4:00 p.m. Eastern Time on days when the Exchange is open for trading. No other changes have been made to this subsection.

Resumption of Trading After a Regulatory Halt

The SROs have jointly developed processes to govern the resumption of trading in the event of a Regulatory Halt. While the actual process of re-launching trading will remain unique to each exchange (for example, trading in Nasdaq-listed securities resumes on the Exchange in most cases through a Halt Cross pursuant to Rule 4753), the proposed rule would harmonize certain common elements of the reopening process that would benefit from consistency across markets. These common elements include the primacy of the Primary Listing Market in resumption decisions, the requirement that the Primary Listing Market make its determination to resume trading in good faith,⁴⁰ and certain parts of the complex process of reopening trading after a SIP Halt. With respect to a SIP Halt, common elements of the reopening process include the interaction among SROs (including the Primary Listing Market with the SIP), the requirement that the Primary Listing Market terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time, the minimum quoting times before resumption of trading, the cutoff time after which trading would not resume during Regular Trading Hours, and the time when trading may resume if the Primary Listing Market does not open a security within the amount of time specified in its rules after the SIP Halt Resume Time.

Proposed Rule 4120(b)(4) provides the process to be followed when resuming trading upon the conclusion of a Regulatory Halt. The new rule, which incorporates Section X.E, and .F of the Amended Nasdaq UTP Plan, is divided

⁴⁰ See Partial Amendment No. 1 of Trading Halt Amendments to the UTP Plan, dated March 31, 2021.

into the following three subsections concerning resumption of trading: (A) After a Regulatory Halt other than an IPO or SIP Halt;⁴¹ (B) after a SIP Halt; and (C) after an IPO Halt.⁴² The Exchange’s proposed rule would make clear that Nasdaq, as the Primary Listing Market, is responsible for declaring a resumption of trading when it makes a good faith determination that trading may resume in a fair and orderly manner and in accordance with its rules. The Exchange expects that other SROs will propose the same concept. Similarly, the Exchange may resume trading in a non-Nasdaq-listed security;⁴³ subject to a Regulatory Halt after the Exchange receives notification from the Primary Listing Market that the Regulatory Halt has been terminated. The Exchange does not run Halt Crosses in securities listed on another exchange and, therefore, the resumption of trading in these securities will occur once notice from the Primary Listing Market is received. Proposed Rule 4120(b)(4)(A)(ii) sets forth the mechanics of how the resumption would occur for these non-Nasdaq-listed securities and is consistent with current practice.

The existing resumption process incorporating the Halt Cross is being moved to proposed Rule 4120(b)(4)(A)(i)a.–c.⁴⁴ This process will apply to any type of a Regulatory Halt except for halts related to the launch of IPOs and a SIP Halt (which does not exist under the current rule) or an LULD Halt. The existing process for launching IPOs has also been incorporated in the proposed rule without substantive modification as proposed Rule 4120(b)(4)(C).

⁴¹ When resuming trading in a halted security, the current Rule states that trading shall resume at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website. Consistent with the Amended Nasdaq UTP Plan, the Proposed Rule will provide that the Exchange will notify all participants and the SIP that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Exchange.

⁴² The Exchange proposes to change an obsolete reference in the provision of the Rules pertaining to resumptions after IPO Halts. The Exchange proposes to replace the phrase “member organizations” with the word “Member” to reflect the fact that the Rules refer to Exchange participants as Members.

⁴³ Companies that are dually-listed on Nasdaq and NYSE have one Primary Listing Market. See proposed amended IM–5220. Thus, if Nasdaq is not the Primary Listing Market for a dually-listed security, it will resume trading after receiving notice from NYSE that the Regulatory Halt has been terminated.

⁴⁴ As proposed, Rule 4120(b)(4)(A)(i)a. will apply to all Regulatory Halts other than an IPO Halt or a SIP Halt.

Proposed Rule 4120(b)(4)(A)(i)d. states that during any trading halt or pause for which a halt cross under Rule 4753 will not occur (as in the case of a Regulatory Halt for securities where Nasdaq is not the Primary Listing Market), orders entered during the Regulatory Halt or pause will not be accepted, unless subject to instructions that the order will be directed to another exchange as described in Rule 4758.

The Exchange proposes to add Rule 4120(b)(4)(A)(i)e. that will address the re-opening process following a Limit Up-Limit Down pause. The Exchange is proposing to move the Limit Up-Limit Down trading pause termination process to Rule 4120(b)(4)(A)(i)e. unchanged from current Rule 4120(c)(10).

For a SIP Halt, proposed Rule 4120(b)(4)(B) establishes the process by which Nasdaq, as the Primary Listing Market, determines to resume trading. The SROs' experience with such events is that communication among SROs, SIPs and market participants is the best way to ensure that the Primary Listing Market has access to available information and to coordinate the reopening of trading in an orderly manner. In addition, the SROs anticipate that market participants and other impacted entities will have access to information about the issue causing the SIP Halt, the duration of the halt and the resumption process through updated communications from the SIP, Operating Committee and Primary Listing Market. The Operating Committees have policies and procedures that, among other things, establish industry notice protocols for various SIP-related events.⁴⁵

Under the proposal, for the resumption of trading after a SIP Halt initiated by the Exchange, the Exchange, as the Primary Listing Market, will make a good-faith determination of the SIP Halt Resume Time, after considering the totality of information as to whether resuming trading would promote a fair and orderly market. Nasdaq would solicit input from the Processor, the Operating Committee, or the operator of the system in question (as well as any Trading Center(s) to which such system is linked), regarding operational readiness to resume trading. The Primary Listing Market retains discretion to delay the SIP Halt Resume Time if it has reason to believe that trading will not resume in a fair or orderly manner.

When resuming trading after a SIP Halt as the Primary Listing Market, Nasdaq will use the same Halt Cross as

other Regulatory Halt types, except for a Regulatory Halt related to the launch of an IPO or an LULD Halt. Whereas the Halt Cross for other Regulatory Halt types (except for a Regulatory Halt related to the launch of an IPO or an LULD Halt, in which Nasdaq will extend the Display Only Period if an order imbalance exists at its conclusion) have a fixed five-minute Display Only Period during which the Exchange is open for quoting but not trading, the complexities in resuming trading after a SIP Halt require additional flexibility to assist market participants in events that may involve hundreds or even thousands of securities. As a result, proposed Rule 4120(b)(4)(B)(i)b. and c. sets a *minimum* five-minute Display Only Period that can be extended at the discretion of Nasdaq to ensure a fair and orderly reopening of trading. It is anticipated that Nasdaq will consider input from other SROs, the SIP and market participants in reaching this conclusion. The SROs considered setting a fixed-length Display Only Period, including a longer such period of ten or fifteen minutes, but it determined that a flexible time period would better serve the markets in that it could be five minutes, or longer if deemed appropriate to facilitate a fair and orderly reopening. Nasdaq would, of course, be expected to communicate the duration of the Display Only Period to market participants (*i.e.*, in the resumption notice) sufficiently in advance of resumption to allow them to prepare their systems for trading.

Proposed Rule 4120(b)(4)(B)(i)a. gives Nasdaq, as the Primary Listing Market, discretion to delay the SIP Halt Resume Time if it believes that trading will not resume in a fair and orderly manner. Moreover, proposed Rule 4120(b)(4)(B)(i)b allows Nasdaq to stagger the SIP Halt Resume Times for multiple securities in order to reopen in a fair and orderly manner. For example, this discretion could be used to open trading in a small number of symbols to ensure that systems are operating normally before resuming trading in the remaining symbols.

In addition, the proposed rule would establish the last SIP Halt Resume Time as 20 minutes before the end of Regular Trading Hours (*e.g.*, 3:40 p.m. ET)—which is the latest time by which Nasdaq believes that it could conduct an orderly Halt Cross process before the end of Regular Trading Hours and without impacting the Closing Cross. If trading has not resumed by that time, Nasdaq would establish its closing price in halted securities using its contingency closing process. The

Exchange's contingent closing process is memorialized in Rule 4754(b)(7).

Proposed Rule 4120(b)(4)(B)(i)c. provides that, for a SIP Halt initiated by Nasdaq, the reopening process shall be the same as for a non-IPO Regulatory Halt pursuant to proposed Rule 4120(b)(4)(A)(i)a.–c., except that the Display Only Period will be a minimum of five minutes, but may be extended at the discretion of Nasdaq pursuant to proposed Rule 4120(b)(4)(B)(i)a.&b.

Proposed Rule 4120(b)(4)(B)(i)d. states that, for a SIP Halt initiated by Nasdaq, if during Regular Trading Hours, Nasdaq does not resume trading in a security for which it is the Primary Listing Market within 10 minutes after the SIP Halt Resume Time, then other markets may resume trading in that security. Nasdaq notes that this 10 minute time period corresponds to a similar 10 minute time period set forth in the Limit Up-Limit Down Plan after which the Processor may update price bands for paused securities if the primary listing market for such security is unable to reopen trading following a trading pause due to a systems or technology issue.⁴⁶

Proposed Rule 4120(b)(4)(B)(ii) provides that, for a SIP Halt initiated by another exchange that is the Primary Listing Market, during Regular Trading Hours, Nasdaq may resume trading after trading has resumed on the Primary Listing Market or notice has been received from the Primary Listing Market that trading may resume. Proposed Rule 4120(b)(4)(B)(ii) provides that, for a SIP Halt initiated by a market other than Nasdaq, during Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time listed by the rules of the Primary Listing Market, Nasdaq may resume trading in that security. Under Proposed Rule 4120(b)(4)(B)(ii), Outside of Regular Trading Hours, Nasdaq may resume trading immediately after the SIP Halt Resume Time.⁴⁷

Nasdaq notes that except as otherwise stated, the proposed procedures for terminating Regulatory Halts replace those set forth in current Rule 4120(c).

Operational Halt

The Exchange proposes in Rule 4120(c) to address Operational Halts,

⁴⁶ See Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, as amended ("Limit Up-Limit Down Plan"), Section VII(B)(4), at https://assets.website-files.com/5fd0e55ae5f254cd291b2d35/5fd10d8e4c53d2024dd15f4f_LULD_Plan%20Amendment_20.pdf.

⁴⁷ See Partial Amendment No. 2 of Trading Halt Amendments to the UTP Plan, dated April 7, 2021.

⁴⁵ See https://www.utpplan.com/DOC/UTP_SIP_Emergency_Procedures.pdf.

which are non-regulatory in nature and apply only to the exchange that calls the halt. The ability to call an Operational Halt has existed for a long time, although in the Exchange's experience, such halts have rarely been initiated. As part of Nasdaq's assessment with the other SROs of the halting and resumption of trading, the Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate. In part, the proposed change is designed to cover situations similar to those that might constitute a Regulatory Halt, but where the impact is limited to a single market. For example, just as a market disruption might trigger a Regulatory Halt for Extraordinary Market Activity if it affects multiple markets, so a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, could impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers.

As is currently the case in existing Rule 4120(a)(3)(B), proposed Rule 4120(c)(1)(C) gives discretion to the Exchange to impose an Operational Halt in a security listed on Nasdaq when a Primary Listing Market imposes an Operational Halt in a security that is a derivative or component of the Nasdaq-listed security. As discussed in relation to Derivative Securities Products, Nasdaq does not automatically halt trading—through either a Regulatory Halt or an Operational Halt—when component or derivative securities are halted. However, proposed Rule 4120(c)(1)(C), like the current rule, gives the Exchange authority to halt a security listed on Nasdaq if the impact of the component or derivative security on price discovery or the fair and orderly market in the Nasdaq-listed security is significant enough to warrant a trading halt. Factors would include whether trading in the security listed on Nasdaq is fair and orderly, the nature of the issue that triggered the Operational Halt(s) on the Primary Listing Market(s) in the component or derivative securities and whether the security that is subject to the Operational Halt continues to trade on other Trading Centers.

Proposed Rule 4120(c) also would authorize the Exchange to implement an Operational Halt for any security trading

on Nasdaq, including a security listed elsewhere:

- If it is experiencing Extraordinary Market Activity on Nasdaq; or
- when otherwise necessary to maintain a fair and orderly market or in the public interest.

The Exchange is proposing to delete Rule 4120(a)(3)(A) that authorizes the Exchange to institute an “operational trading halt” in a security listed on another exchange when that exchange imposes a trading halt because of an order imbalance or influx. The Exchange believes this language could restrict its ability to follow an Operational Halt imposed by another market to a limited set of fact patterns. The Exchange believes that the broader language provided by the definition of Extraordinary Market Activity and the ability to initiate an Operational Halt when necessary to maintain a fair and orderly market will better serve the interests of investors by allowing the Exchange to act where appropriate.

Proposed Rule 4120(c)(2) provides the process for initiating an Operational Halt. Under the proposed rule, the Exchange must notify the SIP if it has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, or if it has declared an Operation Halt or suspension of trading in one or more Eligible Security, pursuant to the procedures adopted by the Operating Committee.

Proposed Rule 4120(c)(3) will clarify how the Exchange resumes trading after an Operational Halt. Proposed Rule 4120(c)(3) provides that the Exchange would resume trading when it determines that trading may resume in a fair and orderly manner consistent with the Exchange's rules. Proposed Rule 4120(c)(3) includes one change from the current rule. Under the current rule, the Halt Cross process is used to resume trading after all halts in Nasdaq-listed securities, whether the halt is a Regulatory Halt or an Operational Halt. The Exchange is proposing to modify the process for an Operational Halt to give the Exchange discretion to open trading without a Halt Cross if it determines such action to be in the best interests of the market. During the July 8, 2015 suspension of trading by NYSE in all securities due to an operational issue, many market participants requested that NYSE resume trading without an auction to avoid any impact on Regulation NMS compliance and mispricing because trading continued on other markets. NYSE determined that its rules (NYSE Rule 7.35A) allow it to reopen without an auction process, and this decision was well received. Indeed, Nasdaq agrees that a Halt Cross in such

a circumstance might prove to be disruptive or result in trade-throughs. Nasdaq's current rules would not permit it to reopen after an Operational Halt without a Halt Cross auction process. The Exchange proposes modifying its rules to provide it the same flexibility.

For Nasdaq-listed securities where a Halt Cross is conducted, the Exchange will use the same Halt Cross process for resumption outlined in Rule 4120(b)(4)(A)(i)a.–c. as it does for most Regulatory Halt types. The proposed rule notes that Nasdaq may determine to open trading without a Halt Cross if it determines such action to be in the best interests of the market. Where the Exchange decides not to hold a Halt Cross for a security subject to a halt or pause, the Exchange proposes to amend Rule 4753 to clarify that market hours trading will resume when Nasdaq releases the security. Moreover, where trading halt or pause for which a halt cross will not occur (such as in the case of an Operational Halt for securities where Nasdaq is not the Primary Listing Market), orders entered during the Operational Halt will not be accepted, unless subject to instructions that the order will be directed to another exchange as described in Rule 4758.⁴⁸ When the Nasdaq is not the Primary Listing Market, when halting trading based on an Operational Halt, initiated by the Primary Listing Market, Nasdaq shall resume trading once it has determined the trading may be resumed in a fair and orderly manner.

Conforming Changes to Other Rules

The Exchange is proposing to modify a number of other rules that cross reference Rule 4120 in light of the reorganization of these rules. Updated cross references are proposed for the following rules:

- Rule 4702(a) (Order Types) will be modified to update cross references to the Rule that governs Limit-Up-Limit-Down procedures. Rule 4702(b)(16)(A) will be modified to update the cross-reference to the provision within Rule 4120 that is used to set the price of a Company Direct Listing Order.
- Rule 4753(a)(3) (Nasdaq Halt Cross) will be updated to make conforming changes to cross-references to IPO Halt procedures, a Trading Pause initiated pursuant to the Limit Up-Limit Down

⁴⁸ The Exchange notes that it does not plan to carry over a portion of the existing Rule text that permits Nasdaq, in the event that it halts trading pursuant to an operational trading halt imposed by another exchange, to commence quotations and trading at any time following initiation of operational trading halts, without regard to regular procedures for resuming trading. This language will be replaced.

procedure, and the definition of the terms “Auction Reference Prices” and “Auction Collars.”

- Rule 4753(b) (Nasdaq Halt Cross) will be modified to update the references to subsections of Rule 4120 to reflect the reorganization of Rule 4120. Going forward, the Exchange will generally refer to Rule 4120 in the proposed amended Rule, rather than to specific subsections, to reflect the intended comprehensive scope of Rule 4753 to the halts described in Rule 4120.⁴⁹ The Exchange also updates a cross-reference to Rule 4120 discussed when describing the role of a “financial advisor.”⁵⁰

- Rule 4753(c) (Nasdaq Halt Cross) will be modified to update a cross reference to Rule 4120.

- Rule 4754(b)(6) (Nasdaq Closing Cross related to the Limit Up-Limit Down Plan) will be modified to reflect the new subsections of Rule 4120 that govern LULD Halts.

- IM-5315-2, IM-5405-1, and IM-5505-1 will be modified to reflect updated cross-references to provisions of Rule 4120 that the Exchange is proposing to relocate.

In addition, the Exchange is proposing to amend several rules that rely on the definition of “Regular Market Session” in current Rule 4120(b)(4)(D). Regular Market Session is defined as “the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m.” The Exchange is proposing to replace the references to Regular Market Session in Rule 5710 (Securities Linked to the Performance of Indexes and Commodities (Including Currencies)) and 5711 with references to Regular Trading Hours as proposed in Rule 4120(a)(12). The term “Regular Trading Hours” would be consistent with the existing application of the definition of “Regular Market Session” and obviate the need for multiple definitions for the regular trading day. As previously discussed, no securities traded on Nasdaq currently close at 4:15 p.m. and, therefore, the alternative closing time in

the current Regular Market Session definition is not needed.

The Exchange also is proposing to modify IM-5220, which covers dually-listed securities, to reflect the changes proposed to Rule 4120. The proposed rule makes clear that the Primary Listing Market is the market on which the security has been listed longest. This clear statement has eliminated the need for the more specific citations to various subsections of Rule 4120 currently contained in IM-5220 because proposed Rule 4120 distinguishes between those securities for which Nasdaq is the Primary Listing Market and those securities for which Nasdaq is not. The Exchange is also eliminating language from the rule that references the Intermarket Trading System, which no longer exists. These changes are not substantive.

Finally, the Exchange proposes to amend certain references in Rule 5711, which governs the trading of certain derivative securities. The references to Regular Market Session would be changed to Regular Trading Hours throughout Rule 5711. This is consistent with changes made in other rules referring to Regular Market Session. The reference in subsection (i)(v)(B)(2) to the trading pauses contained in Rule 4120(a)(11) has been replaced with a citation to the Limit Up-Limit Down Plan, which now applies to these instruments (rather than Rule 4120(a)(11), which as discussed above, is obsolete). The reference in Rule 5711(j)(vi)(B)(5) to halting a series of Managed Trust Securities traded on the Exchange pursuant to unlisted trading privileges will be updated to reference the applicable section of the proposal, Rule 4120(b)(3)(A)(ii).

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁵¹ Specifically, the proposal is consistent with Section 6(b)(5) of the Act⁵² because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other SROs are seeking to adopt harmonized rules related to halting and

resuming trading in U.S.-listed equity securities. The Exchange believes that the proposed rules will provide greater transparency and clarity with respect to the situations in which trading will be halted and the process through which that halt will be implemented and terminated. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposed rules are consistent with Section 6(b)(5) of the Act⁵³ because they will foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities.

As discussed previously, the Exchange believes that the various provisions of the proposed rules that will apply to all SROs are focused on the type of cross-market event where a consistent approach will assist market participants and reduce confusion during a crisis. Because market participants often trade the same security across multiple venues and trade securities listed on different exchanges as part of a common strategy, the Exchange believes that the proposed rules will lessen the risk that market participants holding a basket of securities will have to deal with divergent outcomes depending on where the securities are listed or traded. Conversely, the proposed rules would still allow individual SROs to react differently to events that impact various securities or markets in different ways. This avoids the “brittle market” risk where an isolated event at a single market forces all markets trading equities securities to halt or halts trading in all securities where the issue impacted only a subset of securities. By addressing both concerns, the Exchange believes that the proposed rules further the Act’s goal of maintaining fair and orderly markets.

The Exchange believes that the proposed rules’ focus of responsibility on the Primary Listing Market for decisions related to a Regulatory Halt and the resumption of trading is consistent with the Act, which itself imposes obligations on exchanges with respect to issuers that are listed. As is currently the case, the Primary Listing Market would be responsible for the many regulatory functions related to its listings, including the determination of when to declare a Regulatory Halt. While these core responsibilities remain with the Primary Listing Market, trading

⁴⁹ At a future date, the Exchange intends to submit a rule filing proposal to conform Rules in the 5000 Series which describe trading halts for certain products and Rule 4120.

⁵⁰ As discussed earlier, the Exchange also proposes to amend Rule 4753(b) to state that for Nasdaq-listed securities that are the subject of a trading halt or pause initiated pursuant to Rule 4120, the Nasdaq Halt Cross shall occur at the time specified under Rule 4120, unless Nasdaq determines not to hold a Halt Cross, pursuant to proposed Rule 4120(c)(3)(A). The proposed amendments also clarify that market hours trading will commence when the Nasdaq Halt Cross concludes, or in the case of a security for which Nasdaq determines not to hold a Halt Cross, when Nasdaq releases the security.

⁵¹ 15 U.S.C. 78f(b).

⁵² 15 U.S.C. 78f(b)(5).

⁵³ 15 U.S.C. 78f(b)(5).

in the security can occur on multiple exchanges that have unlisted trading privileges for the security or in the over-the-counter market, regulated by FINRA. These other venues are responsible for monitoring activity on their own markets, but also have agreed to honor a Regulatory Halt.

The proposed changes relating to Regulatory Halts would ensure that all SROs handle the situations covered therein in a consistent manner that would prevent conflicting outcomes in cross-market events and ensure that all Trading Centers recognize a Regulatory Halt declared by the Primary Listing Market. The changes are consistent with and implement the Amended Nasdaq UTP Plan. While the proposed rules recognize one Primary Listing Market for each security, the rules do not prevent an issuer from switching its listing to another national securities exchange that would thereafter assume the responsibilities of Primary Listing Market for that security. Similarly, the proposed rules set forth a fair and objective standard to determine which exchange will be the Primary Listing Market in the case of dually-listed securities: The exchange on which the security has been listed the longest.

The Exchange believes that the other definitions in the proposed rules are also consistent with the Act. For example, existing rules of the Exchange allow it to take action to halt the market in the event of Extraordinary Market Activity. The proposed rules would expand the scope of what constitutes Extraordinary Market Activity, consistent with the amended definition of that term in the Amended Nasdaq UTP Plan, thereby furthering the Act's goal of promoting fair and orderly markets. The Exchange is also proposing to adopt definitions for "SIP Outage," "Material SIP Latency" and "SIP Halt," to explicitly address situations that may disrupt the markets, and these definitions are identical to the definitions in the Amended Nasdaq UTP Plan. The proposed rules provide guidance on when the Exchange should seek information from the Operating Committee, other SROs and market participants as well as means for dissemination of important information to the market, consistent with the Amended Nasdaq UTP Plan. The Exchange believes these provisions strike the right balance in outlining a process to address unforeseen events without preventing SROs from taking action needed to protect the market.

The Exchange believes that the proposed rules, which make halts more consistent across exchange rules, is consistent with the Act in that it will

foster cooperation and coordination with persons engaged in regulating the equities markets. In particular, the Exchange believes it is important for SROs to coordinate when there is a widespread and significant event, as multiple Trading Centers are impacted in such an event. Further, while the Exchange recognizes that the proposed rule will not guarantee a consistent result on every market in all situations, the Exchange does believe that it will assist in that outcome. While the proposed rules relating to Regulatory Halts focuses primarily on the kinds of cross-market events that would likely impact multiple markets, individual SROs will still retain flexibility to deal with unique products or smaller situations confined to a particular market. To that end, the Exchange has retained existing elements of Rule 4120 that focus on its unique products and the processes it has developed over time to interact with its issuers.

Also consistent with the Act, and with the Amended Nasdaq UTP Plan, is the Exchange's proposal in Rule 4120(c) to address Operational Halts, which are non-regulatory in nature and apply only to the exchange that calls the halt. As noted earlier, the Exchange presently has the ability to call an Operational Halt, but does so rarely. The Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate. In part, the proposed change is designed to cover situations similar to those that might constitute a Regulatory Halt, but where the impact is limited to a single market. For example, just as a market disruption might trigger a Regulatory Halt for Extraordinary Market Activity if it affects multiple markets, so could a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers.

As is currently the case in existing Rule 4120(a)(3)(B), proposed Rule 4120(c)(1)(C) gives discretion to the Exchange to impose an Operational Halt in a security listed on Nasdaq when a Primary Listing Market imposes an Operational Halt in a security that is a derivative or component of the Nasdaq-listed security. As discussed in relation to Derivative Securities Products,

Nasdaq does not automatically halt trading—through either a Regulatory Halt or an Operational Halt—when component or derivative securities are halted. However, proposed Rule 4120(c)(1)(C), like the current rule, gives the Exchange authority to halt a security listed on Nasdaq if the impact of the component or derivative security on price discovery or the fair and orderly market in the Nasdaq-listed security is significant enough to warrant a trading halt. Factors would include whether trading in the security listed on Nasdaq is fair and orderly, the nature of the issue that triggered the Operational Halt(s) on the Primary Listing Market(s) in the component or derivative securities and whether the security that is subject to the Operational Halt continues to trade on other Trading Centers.

Proposed Rule 4120(c) also would authorize the Exchange to implement an Operational Halt for any security trading on Nasdaq, including a security listed elsewhere: (i) If it is experiencing Extraordinary Market Activity on Nasdaq; or (ii) when otherwise necessary to maintain a fair and orderly market or in the public interest.

The Exchange believes that it is consistent with the Act to delete Rule 4120(a)(3)(A), which authorizes the Exchange to institute an "operational trading halt" in a security listed on another exchange when that exchange imposes a trading halt because of an order imbalance or influx. The Exchange believes this language could restrict its ability to follow an Operational Halt imposed by another market to a limited set of fact patterns. The Exchange believes that the broader language provided by the definition of Extraordinary Market Activity in proposed Rule 4120(c) will better serve the interests of investors by allowing the Exchange to act where appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act⁵⁴ in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all SROs to harmonize and improve the process related to the halting and resumption of

⁵⁴ 15 U.S.C. 78f(b)(8).

trading in U.S.-listed equity securities, consistent with the Amended Nasdaq UTP Plan. In this area, the Exchange believes that all SROs should have consistent rules to the extent possible in order to provide additional transparency and certainty to market participants and to avoid inconsistent outcomes that could cause confusion and erode market confidence. The proposed changes would ensure that all SROs handle the situations covered therein in a consistent manner and ensure that all Trading Centers handle a Regulatory Halt consistently. The Exchange understands that all other Primary Listing Markets intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that its proposals concerning Operational Halts impose an undue burden on competition. Under the existing Rules, the Exchange already possesses discretionary authority to impose Operational Halts for various reasons, including because of an order imbalance or influx that causes another national securities exchange to impose a trading halt in a security, or because another national securities exchange imposes an operational halt in a security that is a derivative or component of a security listed on Nasdaq. As described earlier, the proposed Rule change clarifies and broadens the circumstances in which the Exchange may impose such Halts, and specifies procedures for both imposing and lifting them. The Exchange does not intend for these proposals to have any competitive impact whatsoever. Indeed, the Exchange expects that other exchanges will adopt similar rules and procedures to govern operational halts, to the extent that they have not done so already.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally. In addition, information regarding the halting and resumption of trading will be disseminated using several freely accessible sources to ensure broad availability of information in addition to the SIP data and proprietary data feeds offered by the Exchange and other SROs that are available to subscribers.

In addition, the proposals include several provisions related to the declaration and timing of trading halts and the resumption of trading designed to avoid any advantage to those who can react more quickly than other participants. The proposed rule gives the Exchanges the ability to declare the timing of a Regulatory Halt immediately. The SROs retain the

discretion to cancel trades that occur after the time of the Regulatory Halt. The proposals also allow for the staggered resumption of trading to assist firms in reentering the market after a SIP Halt affecting multiple securities, in order to reopen in a fair and orderly manner. In addition, the proposals encourage early and frequent communication among the SROs, SIPs and market participants to enable the dissemination of timely and accurate information concerning the market to market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-NASDAQ-2022-017 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-NASDAQ-2022-017. 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-NASDAQ-2022-017 and should be submitted on or before May 31, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-09855 Filed 5-6-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34577; File No. 812-15280]

AFC BDC Inc., et al;

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").
ACTION: Notice.

Notice of application for an order ("Order") under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: AFC BDC Inc., AFC Advisor LLC, AFC Management, LLC, AFC Investments, LLC, and AFC Gamma, Inc.

Filing Dates: The application was filed on November 8, 2021, and amended on November 17, 2021 and April 29, 2022.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving

⁵⁵ 17 CFR 200.30-3(a)(12).