





1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> MEMX LLC (“MEMX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues, reorganize the text of the current relevant rule, and make conforming changes to related rules. The Exchange has designated this proposal as “non-controversial” pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) thereunder.<sup>4</sup>

A notice of the proposed rule change for publication in the Federal Register is provided as Exhibit 1, and the text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

The persons on the Exchange staff prepared to respond to questions and

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

a. Purpose

In conjunction with adoption of an amended Nasdaq UTP Plan proposed by its participants (“Amended Nasdaq UTP Plan”),<sup>5</sup> the Exchange is amending and re-locating its current Rule 11.16 to integrate several definitions and concepts from the Amended Nasdaq UTP Plan and to reorganize the rule in light of the Exchange’s experience with applying the rule as a national securities exchange.<sup>6</sup> The Exchange proposes to replace Rule 11.16, entitled Trading Halts Due to Extraordinary Market Volatility, with two new rules, Rules 11.22 and 11.23. The rules set forth the Exchange’s authority to halt trading

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<sup>5</sup> 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.

<sup>6</sup> The Exchange notes that The Nasdaq Stock Market, LLC (“Nasdaq”), filed a similar proposed rule change with the Commission. See Securities Exchange Act Release No. 94370 (March 7, 2022), 87 FR 14071 (March 11, 2022); Securities Exchange Act Release No. 94838 (May 3, 2022), 87 FR 27683 (May 9, 2022). The Commission approved the proposed rule change on June 8, 2022. See Securities Exchange Act Release No. 95069 (June 8, 2022), 87 FR 36018 (June 14, 2022). The Exchange’s proposal provides the Exchange with less authority to declare halts in the event of regulatory or operational issues than under Nasdaq’s proposal because the Exchange, unlike Nasdaq, is not a Primary Listing Market. Given the Exchange’s status as a non-Primary Listing Market, certain definitions and concepts from the Amended Nasdaq UTP Plan, integrated in Nasdaq’s proposal, are not included herein.

under various circumstances. The Exchange is a participant of the transaction reporting plan governing Tape C Securities (“Nasdaq UTP Plan”).<sup>7</sup> As part of these changes, the Exchange will amend categories of regulatory and operational halts, adopt defined terms from the Amended Nasdaq UTP Plan and move current Rule 11.16 into Rules 11.22 and 11.23 for clarity and organizational purposes. Last, the Exchange is 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, the Exchange 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.<sup>8</sup> These include

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<sup>7</sup> 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.

<sup>8</sup> The Exchange 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.”

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 security<sup>9</sup> 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,<sup>10</sup> and may only trade the security once the Primary Listing Market has cleared the security to resume trading. 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. In addition to establishing common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues, the Exchange is moving current Rule 11.16 into Rules 11.22 and Rule 11.23 in order to reorganize the rule to improve its overall 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

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<sup>9</sup> In addition, securities may be listed on more than one listing exchange ("dually listed"). See, e.g., The Nasdaq Stock Market, LLC Rules 5005(a)(11), 5220 and IM5220.

<sup>10</sup> See proposed Rule 11.22(a)(9).

implementing the necessary rule changes. The Exchange will publish a trader alert at least 30 business days prior to implementing the proposed changes.

### **Definitions**

The Exchange proposes adding a definitions section as Rule 11.22(a) to consolidate the various definitions that will be used in the Rules, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: “Operating Committee,” “Operational Halt,” “Primary Listing Market,” “Processor,”<sup>11</sup> “Regulatory Halt,” “Regular Trading Hours,” “SIP Halt,” and “SIP Halt Resume Time.” The Exchange is adopting a modified form of the term “Extraordinary Market Activity” from the Amended Nasdaq UTP Plan, as described below. The definitions of “UTP Exchange Traded Product”, “Pre-Market Session”, and “Post-Market Session” are included in the definitions section with cross references to their current definitions in the Exchange’s Rulebook.<sup>12</sup> The Exchange will add definitions of “Trust Shares,” “Index Fund Shares,” “Managed Fund Shares,” and “Trust Issued Receipts”, as subcategories to the defined term “UTP Exchange Traded Product”, and those terms will have the same meanings as those found currently in the rules of at least one other exchange.<sup>13</sup>

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<sup>11</sup> 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.

<sup>12</sup> “UTP Exchange Traded Product”, is currently defined in Rule 1.5(kk). Post-Market Session is defined in Rule 1.5(w). Pre-Market Session is currently defined in Rule 1.5(x).

<sup>13</sup> The Exchange notes that Nasdaq PHLX LLC (“PHLX”), filed a similar proposed rule change with the Commission. See Securities Exchange Act Release No. 96574 (December 22, 2022), 87 FR 80213 (December 29, 2022) (the “PHLX Proposal”). Accordingly, the Exchange referenced PHLX’s current and proposed relevant rules and notes that the terms “Trust Shares,” “Index Fund

First, the Exchange proposes to add the definition of “Primary Listing Market”<sup>14</sup> to Rule 11.22(a), which will have the same meaning as in the Amended Nasdaq UTP Plan, Section X.A.8. As is currently the case 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 add the definition of “Extraordinary Market Activity” to Rule 11.22,<sup>15</sup> which would represent a modified version of the term defined in the Amended Nasdaq UTP Plan, Section X.A.1.<sup>16</sup> Specifically, the Exchange proposes to remove the concept of a “market-wide basis” from the Amended Nasdaq UTP Plan’s

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Shares,” “Managed Fund Shares,” and “Trust Issued Receipts” are currently defined in Rule 3100(b)(1)(A)-(D) of PHLX’s rulebook.

<sup>14</sup> See proposed Rule 11.22(a)(7).

<sup>15</sup> See proposed Rule 11.22(a)(2).

<sup>16</sup> In the Amended Nasdaq UTP Plan, “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.

definition of Extraordinary Market Activity for purposes of the Exchange's Rules because the term "Extraordinary Market Activity" would only be used in the Exchange's Rules as a basis for the Exchange to initiate an Operational Halt, which would only occur on the market declaring the halt (i.e., the Exchange).<sup>17</sup> The current rule does not include a definition for Extraordinary Market Activity. The third set of new proposed definitions would be specific to events involving the SIP. While the Exchange recognizes that many events involving the SIP would also meet the definition of "Extraordinary Market Activity" (as defined in the Amended Nasdaq UTP Plan), 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 Halt Resume Time" and "SIP Halt" are intended to provide additional guidance to address this subset of potential market issues.<sup>18</sup> In addition, the Exchange is proposing to define terms related to SIP governance needed in order to understand these definitions:

- "Processor" or "SIP"<sup>19</sup> 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

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<sup>17</sup> The Exchange proposes to define "Extraordinary Market Activity" to mean 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 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.

<sup>18</sup> The Exchange proposes to define the terms "SIP Halt Resume Time" and "SIP Halt" to have the same meaning as in the Amended Nasdaq UTP Plan.

<sup>19</sup> See proposed Rule 11.22(a)(8).

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”<sup>20</sup> is defined as the national market system plan governing the SIP.

- “Operating Committee”<sup>21</sup> 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,”<sup>22</sup> 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<sup>23</sup> or material SIP latency.<sup>24</sup>

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<sup>20</sup> See proposed Rule 11.22(a)(13).

<sup>21</sup> See proposed Rule 11.22(a)(3).

<sup>22</sup> See proposed Rule 11.22(a)(11).

<sup>23</sup> SIP outage means 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. See Amended Nasdaq UTP Plan, Section X.A.13.

<sup>24</sup> Material SIP latency means 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. See Amended Nasdaq UTP Plan, Section X.A.5.

The Exchange proposes to add a definition of “Regulatory Halt”<sup>25</sup> as having the same meaning as in 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. A Regulatory Halt includes a trading pause triggered by Limit Up-Limit Down, a halt based on Extraordinary Market Activity (as defined in the Amended Nasdaq UTP Plan), a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.

The Exchange proposes to add a definition of “Operational Halt,”<sup>26</sup> which is defined as having the same meaning as in 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 and is not a Regulatory Halt. An Operational Halt is effective only on the Exchange; 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.<sup>27</sup> 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 Operational Halt. An Operational Halt is not a Regulatory Halt.

### **Regulatory Halt**

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<sup>25</sup> See proposed Rule 11.22(a)(9).

<sup>26</sup> See proposed Rule 11.22(a)(4).

<sup>27</sup> See Exchange Rules 11.1(c) and 11.16(d).

Proposed Rule 11.22(b)(1)(A)(i)-(iii) includes four situations in which the Exchange must halt trading pursuant to a Regulatory Halt: under the Limit Up-Limit Down Plan, pursuant to Extraordinary Market Volatility (Market-Wide Circuit Breakers), when the Primary Listing Market declares a SIP halt, or when the Primary Listing Market declares a trading halt based on Extraordinary Market Activity, as defined in the Nasdaq UTP Plan. Proposed Rule 11.22(b)(1)(A)(i) retains without substantive modification the existing rule with respect to the Limit Up-Limit Down Plan (current Rule 11.16(e)). The Exchange, as a non-Primary Listing Market, does not itself declare trading pauses pursuant to the Limit Up-Limit Down Plan, but rather implements such pauses declared by Primary Listing Markets. The Exchange proposes to make clear in Rule 11.22(b)(1)(A)(ii) that a trading halt pursuant to Extraordinary Market Volatility (Market-Wide Circuit Breakers), as is described in proposed Rule 11.23, constitutes a Regulatory Halt. The Exchange would also add subsections concerning Regulatory Halts declared by Primary Listing Markets based on a SIP halt or Extraordinary Market Activity in Rule 11.22(b)(1)(A)(iii). As is the case under the current Rule 11.16, the Exchange would honor a Regulatory Halt. The Exchange proposes to add Rule 11.22(b)(1)(A)(iv), which states that the Exchange will halt trading for any security traded on the Exchange when the Primary Listing Market declares a Regulatory Halt for any such security. The Exchange also proposes to add Rule 11.22(b)(1)(A)(iv)(a), which makes clear that the start time of a Regulatory Halt is the time the Primary Listing Market declares the Regulatory Halt, regardless of whether communications issues impact the dissemination of notice of the Halt.<sup>28</sup> This proposal would provide market participants

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<sup>28</sup> This is consistent with the Amended Nasdaq UTP Plan. See Amended Nasdaq UTP Plan, Section

with certainty on the official start time of the Regulatory 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 Regulatory 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 Regulatory Halt reaches all trading centers. However, a fixed “official” Regulatory Halt time will allow SROs to revisit trades after the fact and determine in a consistent manner whether specific trades should stand.

### **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, 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,<sup>29</sup> 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

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X.D.1.

<sup>29</sup> See Partial Amendment No. 1 of Trading Halt Amendments to the UTP Plan, dated March 31, 2021.

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 11.22(b)(2) provides the process to be followed when resuming trading upon the conclusion of a Regulatory Halt. The new rule, which incorporates Section X.E.1 and X.F.3 of the Amended Nasdaq UTP Plan, is divided into the following two subsections concerning resumption of trading: (A) after a Regulatory Halt other than a SIP Halt; and (B) after a SIP Halt. Proposed Rule 11.22(b)(2)(A)(i) provides that, for a Regulatory Halt other than a SIP Halt, the Exchange may resume trading subject to the Regulatory Halt after the Exchange receives notification from the Primary Listing Market that the Regulatory Halt has been terminated. The Exchange does not conduct halt crosses and, therefore, the resumption of trading in these securities will occur once notice from the Primary Listing Market is received. Proposed Rule 11.22(b)(2)(B)(i) provides that, for securities subject to a SIP Halt initiated by another exchange that is the Primary Listing Market, during Regular Trading Hours, the Exchange 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. During Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, the Exchange may resume trading in that security. Outside Regular Trading Hours, the Exchange may resume trading immediately after the SIP Halt Resume Time.<sup>30</sup> Proposed Rule 11.22(b)(2) is consistent with current

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<sup>30</sup> See Partial Amendment No. 2 of Trading Halt Amendments to the UTP Plan, dated April 7, 2021.

practice. Proposed Rule 11.22(b)(3) retains without substantive modification existing Rule 11.16(f). Proposed Rule 11.22(b)(3) states that on the occurrence of any Regulatory Halt pursuant to this Rule all outstanding orders in the System will be cancelled, the Exchange will not accept new orders, and at the end of the Regulatory Halt, the Exchange shall re-open the security and again begin accepting orders. Last, consistent with Section X.G of the Nasdaq UTP Plan, the Exchange is proposes to add Rule 11.22(c), which will more broadly require the Exchange to halt trading of a UTP security if the Primary Listing Market declares a Regulatory Halt in that security, and more specifically, governs trading halts in certain Exchange Traded Products traded on the Exchange pursuant to unlisted trading privileges during pre-market, regular trading hours, and post-market sessions.

### **Operational Halt**

The Exchange proposes in Rule 11.22(d) to address Operational Halts, 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. As part of the Exchange'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.<sup>31</sup> 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 (as defined in the Amended Nasdaq UTP Plan) if it affects

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<sup>31</sup> Differences between Nasdaq and the Exchange's proposals as it relates to Operational Halts stem from Nasdaq's status as a Primary Listing Market, unlike the Exchange.

multiple markets, so too 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. Proposed Rule 11.22(d) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange:

- if it is experiencing Extraordinary Market Activity<sup>32</sup> on the Exchange; or
- when otherwise necessary to maintain a fair and orderly market or in the public interest.

Proposed Rule 11.22(d)(2) provides the process for initiating an Operational Halt. Under the proposed rule, on the occurrence of any Operational Halt all outstanding orders in the System will be cancelled. Further, 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 Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee. Proposed Rule 11.22(d)(3) will clarify how the Exchange resumes trading after an Operational Halt. Proposed Rule 11.22(d)(3)(A) 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 11.22(d)(3)(B) provides that orders

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<sup>32</sup> "Extraordinary Market Activity" in proposed Rule 11.22(d) would have the meaning proposed by the Exchange, which is a modified form of the term from the Amended Nasdaq UTP Plan, as described above.

entered during the Operational Halt will not be accepted. Proposed Rule 11.22(d)(3)(C) provides that trading in a halted security shall resume at the time specified by the Exchange in a notice. Proposed Rule 11.22(d)(3)(C) also specifies that Exchange will notify all other Plan participants and the SIP of such an Operational Halt as well as provide notice that an Operational Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Exchange. If the SIP is unable to disseminate notice of an Operational Halt or the Exchange is not open for trading, the Exchange will take reasonable steps to provide notice of an Operational Halt, which shall include both the type and start time of the Operational Halt. Each Plan participant shall continuously monitor communication protocols established by the Operating Committee and the Processor during market hours to disseminate notice of an Operational Halt, and the failure of a participant to do so shall not prevent the Exchange from initiating an Operational Halt.

#### **Trading Halts Due to Extraordinary Market Volatility**

Lastly, as stated above, the Exchange proposes moving a large portion of current Rule 11.16 into a new proposed Rule 11.23, in order to separate out the previously established rules related to Trading Halts Due to Extraordinary Market Volatility (i.e. Market-Wide Circuit Breakers). These halts, which fall under the category of Regulatory Halts, are cross referenced in proposed Rule 11.22(b)(i)(A)(ii). The text of the proposed Rule 11.23 does not materially differ from what is currently in place under Rule 11.16(a)-(d)<sup>33</sup> and Rule 11.16(h)-(j)<sup>34</sup>. The Exchange believes separating this text from Rule 11.22

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<sup>33</sup> These provisions outline the processes related to Market-Wide Circuit Breaker halts.

<sup>34</sup> These provisions outline the processes related to Market-Wide Circuit Breaker testing.

is appropriate in order to remain consistent with similar rule filings proposed by other Exchanges.<sup>35</sup>

### **Conforming Changes to Other Rules**

The Exchange is proposing to modify Rule 11.10(a)(3), Rule 11.11(b), Rules 11.20(d)(2)(D) and (E), and Rule 14.1(b)(3) that cross reference current Rules 11.16(e), 11.16(e), 11.16(b), 11.16(b), and 11.16, respectively. In light of the proposed deletion of Rule 11.16, the Exchange proposes to modify the cross references in Rule 11.10(a)(3) and Rule 11.11(b) to cross reference proposed Rule 11.22(b)(1)(A)(i), which contains the same text as current Rule 11.16(e).<sup>36</sup> The Exchange proposes to modify the cross references in Rules 11.20(d)(D) and (E) to cross reference proposed Rule 11.23(b), which also contains the same text as current Rule 11.16(b)<sup>37</sup>. Lastly, the Exchange proposes to modify the cross references in Rule 14.1(b)(3) to cross reference proposed Rules 11.22 and 11.23, which collectively will replace the current Rule 11.16.

a. **Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>38</sup> in general, and furthers the objectives of Sections

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<sup>35</sup> PHLX's current Rule 3101, "Trading Halts Due to Extraordinary Market Volatility" sets forth similar provisions related to Market-Wide Circuit Breakers and Market-Wide Circuit Breaker Testing. In turn, in its recent rule filing, PHLX's proposed Rule 3100(b)(ii), which would state: "The Exchange shall implement a trading halt due to extraordinary market volatility, as set forth in Rule 3101." See PHLX Proposal, *supra* note 13. Accordingly, the Exchange believes it consistent to include the full text of these relevant provisions in a separate rule (proposed Rule 11.23), with a cross reference to such in its proposed Rule 11.22.

<sup>36</sup> Current Rule 11.16(e) and proposed Rule 11.22(b)(1)(A)(i) govern Limit Up-Limit Down procedures.

<sup>37</sup> Current Rule 11.16(b) and proposed Rule 11.23(b) speak to Market-Wide Circuit Breaker halts.

<sup>38</sup> 15 U.S.C. 78f(b).

and 6(b)(5) of the Act,<sup>39</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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.

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 Act<sup>40</sup> 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

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<sup>39</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> Id.

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 in the security can occur on multiple exchanges that have unlisted trading privileges for the security, such as on the Exchange, or in the over-the-counter market, regulated by FINRA. The Exchange is responsible for monitoring activity on its own markets, but also must 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.

The Exchange believes that the definitions in the proposed rules are also consistent with the Act. The Exchange proposes adding a definitions section as Rule

11.22(a) to consolidate the various definitions that will be used in the Rule, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting a modified form of the term “Extraordinary Market Activity” from the Amended Nasdaq UTP Plan, as described above. In addition, several other definitions have been moved into the definitions section from elsewhere in the current rule without changes in the definitions. As noted, certain definitions are consistent with the definitions in the Amended Nasdaq UTP Plan, furthering the Act’s goal of promoting fair and orderly markets. For example, the Exchange is proposing to adopt a definition of “SIP Halt,” to explicitly address a situation that may disrupt the markets, and this definition is identical to the definition in the Amended Nasdaq UTP Plan. In addition to “SIP Halt,” the Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: “Operating Committee,” “Operational Halt,” “Primary Listing Market,” “Processor,” “Regulatory Halt,” “Regular Trading Hours,” and “SIP Halt Resume Time,” as discussed above.

The Exchange believes that the proposed rules, which make halts more consistent across exchange rules, are consistent with the Act in that they 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 focus 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. Also consistent with the Act, and with the Amended Nasdaq UTP Plan, is the Exchange's proposal in Rule 11.22(d) to address Operational Halts, which are nonregulatory 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. The Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate. The proposed change is designed to cover situations where the impact is limited to a single market. For example, 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. Proposed Rule 11.22(d) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange: (i) if it is experiencing Extraordinary Market Activity on the Exchange; or (ii) when otherwise necessary to maintain a fair and orderly market or in the public interest. The Exchange believes that the broader language provided by the definition of Extraordinary Market Activity in proposed Rule 11.22(d) will better serve the interests of investors by allowing the Exchange to act where appropriate. Other sections of current Rule 11.16 are reorganized and retained without substantive modifications into proposed Rule 11.23, as described above.

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

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act<sup>41</sup> 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 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 non-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 and, as described earlier, the proposed Rule change clarifies 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

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<sup>41</sup> 15 U.S.C. 78f(b)(8).

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 declaration and timing of trading halts and the resumption of trading is designed to avoid any advantage to those who can react more quickly than other participants. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>42</sup> and Rule 19b-4(f)(6) thereunder<sup>43</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not

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<sup>42</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>43</sup> 17 CFR 240.19b-4(f)(6).

become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposed changes do not significantly affect the protection of investors or the public interest; instead, they will further the interests of investors and the public by, among other things, establishing 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 that will better serve the interests of investors. Moreover, the proposed changes will not impose any significant or undue burden on competition to the extent that they serve these purposes. As discussed above, the Exchange believes the proposal will 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 trading in U.S.-listed equity securities, consistent with the Amended Nasdaq UTP Plan.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>44</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the

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<sup>44</sup> 17 CFR 240.19b-4(f)(6)(iii).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed changes implement the trading halt amendments adopted by the Nasdaq UTP Plan, see Securities Exchange Act Release No. 34-92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (S7-24-89), and will make the Exchange's rules concerning halts consistent with those of the other non-Primary Listing Markets, including PHLX, who recently filed the aforementioned PHLX proposal. In addition, the proposal is similar to a proposal that Nasdaq filed with the Commission, SR-NASDAQ-2022-017, except that the Exchange's proposal provides the Exchange with less authority to declare halts in the event of regulatory or operational issues because of the fact that the Exchange, unlike Nasdaq, is not a Primary Listing Market. Such differences do not raise any novel or controversial issues, as the authority the Exchange seeks, as a non-Primary Listing Market, is already provided for in Nasdaq's filing, and it is generally consistent with the authority that the Exchange already possesses in this regard. Of note, the Exchange's proposed rules differ slightly from PHLX and Nasdaq's with respect to how the Exchange handles orders currently resting on the book at the time of a halt. Specifically, the Exchange currently cancels all orders on the occurrence of any trading halt, a practice which it intends to carry forward. Accordingly, the differences between

PHLX and Nasdaq's rules related to order handling upon the occurrence of any trading halt existed prior to this rule filing and do not represent any novel distinctions under the proposed rules.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 - Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 - Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2023-11]  
[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Common Criteria and Procedures for Halting and Resuming Trading in Equity Securities in the Event of Regulatory or Operational Issues, Reorganize the Text of the Current Relevant Rule, and Make Conforming Changes to Related Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues, reorganize the text of the current relevant rule, and make conforming changes to related rules. The text of the proposed rule change is

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

provided in Exhibit 5.

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”),<sup>5</sup> the Exchange is amending and re-locating its current Rule 11.16 to integrate several definitions and concepts from the Amended Nasdaq UTP Plan and to reorganize the rule in light of the Exchange’s experience with applying the rule as a national securities exchange.<sup>6</sup> The Exchange proposes to replace

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<sup>5</sup> 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.

<sup>6</sup> The Exchange notes that The Nasdaq Stock Market, LLC (“Nasdaq”), filed a similar proposed rule change with the Commission. See Securities Exchange Act Release No. 94370 (March 7, 2022), 87 FR 14071 (March 11, 2022); Securities Exchange Act Release No. 94838 (May 3, 2022), 87 FR 27683 (May 9, 2022). The Commission approved the proposed rule change on June 8, 2022. See Securities Exchange Act Release No. 95069 (June 8, 2022), 87 FR 36018 (June 14, 2022).

Rule 11.16, entitled Trading Halts Due to Extraordinary Market Volatility, with two new rules, Rules 11.22 and 11.23. The rules set forth the Exchange'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").<sup>7</sup> As part of these changes, the Exchange will amend categories of regulatory and operational halts, adopt defined terms from the Amended Nasdaq UTP Plan and move current Rule 11.16 into Rules 11.22 and 11.23 for clarity and organizational purposes. Last, the Exchange is 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, the Exchange will retain discretion in certain instances as to whether and how to handle halts, as is discussed below.

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The Exchange's proposal provides the Exchange with less authority to declare halts in the event of regulatory or operational issues than under Nasdaq's proposal because the Exchange, unlike Nasdaq, is not a Primary Listing Market. Given the Exchange's status as a non-Primary Listing Market, certain definitions and concepts from the Amended Nasdaq UTP Plan, integrated in Nasdaq's proposal, are not included herein.

<sup>7</sup> 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.

Every U.S.-listed equity security has its primary listing on a specific stock exchange that is responsible for a number of regulatory functions.<sup>8</sup> 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 security<sup>9</sup> 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,<sup>10</sup> and may only trade the security once the Primary Listing Market has cleared the security to resume trading. 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. In addition to establishing common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues, the

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<sup>8</sup> The Exchange 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."

<sup>9</sup> In addition, securities may be listed on more than one listing exchange ("dually listed"). See, e.g., The Nasdaq Stock Market, LLC Rules 5005(a)(11), 5220 and IM5220.

<sup>10</sup> See proposed Rule 11.22(a)(9).

Exchange is moving current Rule 11.16 into Rules 11.22 and Rule 11.23 in order to reorganize the rule to improve its overall 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 a trader alert at least 30 business days prior to implementing the proposed changes.

### **Definitions**

The Exchange proposes adding a definitions section as Rule 11.22(a) to consolidate the various definitions that will be used in the Rules, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: “Operating Committee,” “Operational Halt,” “Primary Listing Market,” “Processor,”<sup>11</sup> “Regulatory Halt,” “Regular Trading Hours,” “SIP Halt,” and “SIP Halt Resume Time.” The Exchange is adopting a modified form of the term “Extraordinary Market Activity” from the Amended Nasdaq UTP Plan, as described below. The definitions of “UTP Exchange Traded Product”, “Pre-Market Session”, and “Post-Market Session” are included in the definitions section with cross references to their current definitions in the Exchange’s Rulebook.<sup>12</sup> The Exchange will add definitions of “Trust Shares,” “Index Fund Shares,” “Managed Fund Shares,” and “Trust Issued Receipts” , as subcategories to the defined term “UTP Exchange Traded

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<sup>11</sup> 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.

<sup>12</sup> “UTP Exchange Traded Product”, is currently defined in Rule 1.5(kk). Post-Market Session is defined in Rule 1.5(w). Pre-Market Session is currently defined in Rule 1.5(x).

Product”, and those terms will have the same meanings as those found currently in the rules of at least one other exchange.<sup>13</sup>

First, the Exchange proposes to add the definition of “Primary Listing Market”<sup>14</sup> to Rule 11.22(a), which will have the same meaning as in the Amended Nasdaq UTP Plan, Section X.A.8. As is currently the case 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 add the definition of “Extraordinary Market Activity” to Rule 11.22,<sup>15</sup> which would represent a modified version of the term defined in the Amended Nasdaq UTP Plan, Section X.A.1.<sup>16</sup> Specifically, the Exchange proposes

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<sup>13</sup> The Exchange notes that Nasdaq PHLX LLC (“PHLX”), filed a similar proposed rule change with the Commission. See Securities Exchange Act Release No. 96574 (December 22, 2022), 87 FR 80213 (December 29, 2022) (the “PHLX Proposal”). Accordingly, the Exchange referenced PHLX’s current and proposed relevant rules and notes that the terms “Trust Shares,” “Index Fund Shares,” “Managed Fund Shares,” and “Trust Issued Receipts” are currently defined in Rule 3100(b)(1)(A)-(D) of PHLX’s rulebook.

<sup>14</sup> See proposed Rule 11.22(a)(7).

<sup>15</sup> See proposed Rule 11.22(a)(2).

<sup>16</sup> In the Amended Nasdaq UTP Plan, “Extraordinary Market Activity” means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated

to remove the concept of a “market-wide basis” from the Amended Nasdaq UTP Plan’s definition of Extraordinary Market Activity for purposes of the Exchange’s Rules because the term “Extraordinary Market Activity” would only be used in the Exchange’s Rules as a basis for the Exchange to initiate an Operational Halt, which would only occur on the market declaring the halt (i.e., the Exchange).<sup>17</sup> The current rule does not include a definition for Extraordinary Market Activity. The third set of new proposed definitions would be specific to events involving the SIP. While the Exchange recognizes that many events involving the SIP would also meet the definition of “Extraordinary Market Activity” (as defined in the Amended Nasdaq UTP Plan), 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 Halt Resume Time” and “SIP Halt” are intended to provide additional guidance to address this subset of potential market issues.<sup>18</sup> In addition, the Exchange is proposing to define terms related to SIP

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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.

<sup>17</sup> The Exchange proposes to define “Extraordinary Market Activity” to mean 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 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.

<sup>18</sup> The Exchange proposes to define the terms “SIP Halt Resume Time” and “SIP Halt” to have the same meaning as in the Amended Nasdaq UTP Plan.

governance needed in order to understand these definitions:

- “Processor” or “SIP”<sup>19</sup> 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”<sup>20</sup> is defined as the national market system plan governing the SIP.
- “Operating Committee”<sup>21</sup> 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,”<sup>22</sup> 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<sup>23</sup>

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<sup>19</sup> See proposed Rule 11.22(a)(8).

<sup>20</sup> See proposed Rule 11.22(a)(13).

<sup>21</sup> See proposed Rule 11.22(a)(3).

<sup>22</sup> See proposed Rule 11.22(a)(11).

<sup>23</sup> SIP outage means 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

or material SIP latency.<sup>24</sup>

The Exchange proposes to add a definition of “Regulatory Halt”<sup>25</sup> as having the same meaning as in 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. A Regulatory Halt includes a trading pause triggered by Limit Up-Limit Down, a halt based on Extraordinary Market Activity (as defined in the Amended Nasdaq UTP Plan), a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.

The Exchange proposes to add a definition of “Operational Halt,”<sup>26</sup> which is defined as having the same meaning as in 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 and is not a Regulatory Halt. An Operational Halt is effective only on the Exchange; 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.<sup>27</sup> The proposed change would

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the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future. See Amended Nasdaq UTP Plan, Section X.A.13.

<sup>24</sup> Material SIP latency means 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. See Amended Nasdaq UTP Plan, Section X.A.5.

<sup>25</sup> See proposed Rule 11.22(a)(9).

<sup>26</sup> See proposed Rule 11.22(a)(4).

<sup>27</sup> See Exchange Rules 11.1(c) and 11.16(d).

provide greater clarity on when an Operational Halt may be implemented and the process for halting and resuming trading in the event of an Operational Halt. An Operational Halt is not a Regulatory Halt.

### **Regulatory Halt**

Proposed Rule 11.22(b)(1)(A)(i)-(iii) includes four situations in which the Exchange must halt trading pursuant to a Regulatory Halt: under the Limit Up-Limit Down Plan, pursuant to Extraordinary Market Volatility (Market-Wide Circuit Breakers), when the Primary Listing Market declares a SIP halt, or when the Primary Listing Market declares a trading halt based on Extraordinary Market Activity, as defined in the Nasdaq UTP Plan. Proposed Rule 11.22(b)(1)(A)(i) retains without substantive modification the existing rule with respect to the Limit Up-Limit Down Plan (current Rule 11.16(e)). The Exchange, as a non-Primary Listing Market, does not itself declare trading pauses pursuant to the Limit Up-Limit Down Plan, but rather implements such pauses declared by Primary Listing Markets. The Exchange proposes to make clear in Rule 11.22(b)(1)(A)(ii) that a trading halt pursuant to Extraordinary Market Volatility (Market-Wide Circuit Breakers), as is described in proposed Rule 11.23, constitutes a Regulatory Halt. The Exchange would also add subsections concerning Regulatory Halts declared by Primary Listing Markets based on a SIP halt or Extraordinary Market Activity in Rule 11.22(b)(1)(A)(iii). As is the case under the current Rule 11.16, the Exchange would honor a Regulatory Halt. The Exchange proposes to add Rule 11.22(b)(1)(A)(iv), which states that the Exchange will halt trading for any security traded on the Exchange when the Primary Listing Market declares a Regulatory Halt for any such security. The Exchange also proposes to add Rule 11.22(b)(1)(A)(iv)(a), which

makes clear that the start time of a Regulatory Halt is the time the Primary Listing Market declares the Regulatory Halt, regardless of whether communications issues impact the dissemination of notice of the Halt.<sup>28</sup> This proposal would provide market participants with certainty on the official start time of the Regulatory 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 Regulatory 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 Regulatory Halt reaches all trading centers. However, a fixed “official” Regulatory Halt time will allow SROs to revisit trades after the fact and determine in a consistent manner whether specific trades should stand.

### **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, 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,<sup>29</sup> and certain parts of the complex process

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<sup>28</sup> This is consistent with the Amended Nasdaq UTP Plan. See Amended Nasdaq UTP Plan, Section X.D.1.

<sup>29</sup> See Partial Amendment No. 1 of Trading Halt Amendments to the UTP Plan, dated March 31, 2021.

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 11.22(b)(2) provides the process to be followed when resuming trading upon the conclusion of a Regulatory Halt. The new rule, which incorporates Section X.E.1 and X.F.3 of the Amended Nasdaq UTP Plan, is divided into the following two subsections concerning resumption of trading: (A) after a Regulatory Halt other than a SIP Halt; and (B) after a SIP Halt. Proposed Rule 11.22(b)(2)(A)(i) provides that, for a Regulatory Halt other than a SIP Halt, the Exchange may resume trading subject to the Regulatory Halt after the Exchange receives notification from the Primary Listing Market that the Regulatory Halt has been terminated. The Exchange does not conduct halt crosses and, therefore, the resumption of trading in these securities will occur once notice from the Primary Listing Market is received. Proposed Rule 11.22(b)(2)(B)(i) provides that, for securities subject to a SIP Halt initiated by another exchange that is the Primary Listing Market, during Regular Trading Hours, the Exchange 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. During Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time specified by the rules of the Primary

Listing Market after the SIP Halt Resume Time, the Exchange may resume trading in that security. Outside Regular Trading Hours, the Exchange may resume trading immediately after the SIP Halt Resume Time.<sup>30</sup> Proposed Rule 11.22(b)(2) is consistent with current practice. Proposed Rule 11.22(b)(3) retains without substantive modification existing Rule 11.16(f). Proposed Rule 11.22(b)(3) states that on the occurrence of any Regulatory Halt pursuant to this Rule all outstanding orders in the System will be cancelled, the Exchange will not accept new orders, and at the end of the Regulatory Halt, the Exchange shall re-open the security and again begin accepting orders. Last, consistent with Section X.G of the Nasdaq UTP Plan, the Exchange is proposes to add Rule 11.22(c), which will more broadly require the Exchange to halt trading of a UTP security if the Primary Listing Market declares a Regulatory Halt in that security, and more specifically, governs trading halts in certain Exchange Traded Products traded on the Exchange pursuant to unlisted trading privileges during pre-market, regular trading hours, and post-market sessions.

### **Operational Halt**

The Exchange proposes in Rule 11.22(d) to address Operational Halts, 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. As part of the Exchange'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.<sup>31</sup> In part, the proposed change is designed to cover situations similar to

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<sup>30</sup> See Partial Amendment No. 2 of Trading Halt Amendments to the UTP Plan, dated April 7, 2021.

<sup>31</sup> Differences between Nasdaq and the Exchange's proposals as it relates to Operational Halts stem from Nasdaq's status as a Primary Listing Market, unlike the Exchange.

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 (as defined in the Amended Nasdaq UTP Plan) if it affects multiple markets, so too 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. Proposed Rule 11.22(d) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange:

- if it is experiencing Extraordinary Market Activity<sup>32</sup> on the Exchange; or
- when otherwise necessary to maintain a fair and orderly market or in the public interest.

Proposed Rule 11.22(d)(2) provides the process for initiating an Operational Halt. Under the proposed rule, on the occurrence of any Operational Halt all outstanding orders in the System will be cancelled. Further, 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 Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee.

Proposed Rule 11.22(d)(3) will clarify how the Exchange resumes trading after an

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<sup>32</sup> “Extraordinary Market Activity” in proposed Rule 11.22(d) would have the meaning proposed by the Exchange, which is a modified form of the term from the Amended Nasdaq UTP Plan, as described above.

Operational Halt. Proposed Rule 11.22(d)(3)(A) 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 11.22(d)(3)(B) provides that orders entered during the Operational Halt will not be accepted. Proposed Rule 11.22(d)(3)(C) provides that trading in a halted security shall resume at the time specified by the Exchange in a notice. Proposed Rule 11.22(d)(3)(C) also specifies that Exchange will notify all other Plan participants and the SIP of such an Operational Halt as well as provide notice that an Operational Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Exchange. If the SIP is unable to disseminate notice of an Operational Halt or the Exchange is not open for trading, the Exchange will take reasonable steps to provide notice of an Operational Halt, which shall include both the type and start time of the Operational Halt. Each Plan participant shall continuously monitor communication protocols established by the Operating Committee and the Processor during market hours to disseminate notice of an Operational Halt, and the failure of a participant to do so shall not prevent the Exchange from initiating an Operational Halt.

#### **Trading Halts Due to Extraordinary Market Volatility**

Lastly, as stated above, the Exchange proposes moving a large portion of current Rule 11.16 into a new proposed Rule 11.23, in order to separate out the previously established rules related to Trading Halts Due to Extraordinary Market Volatility (i.e. Market-Wide Circuit Breakers). These halts, which fall under the category of Regulatory Halts, are cross referenced in proposed Rule 11.22(b)(i)(A)(ii). The text of the proposed Rule 11.23 does not materially differ from what is currently in place under Rule 11.16(a)-

(d)<sup>33</sup> and Rule 11.16(h)-(j)<sup>34</sup>. The Exchange believes separating this text from Rule 11.22 is appropriate in order to remain consistent with similar rule filings proposed by other Exchanges.<sup>35</sup>

### **Conforming Changes to Other Rules**

The Exchange is proposing to modify Rule 11.10(a)(3), Rule 11.11(b), Rules 11.20(d)(2)(D) and (E), and Rule 14.1(b)(3) that cross reference current Rules 11.16(e), 11.16(e), 11.16(b), 11.16(b), and 11.16, respectively. In light of the proposed deletion of Rule 11.16, the Exchange proposes to modify the cross references in Rule 11.10(a)(3) and Rule 11.11(b) to cross reference proposed Rule 11.22(b)(1)(A)(i), which contains the same text as current Rule 11.16(e).<sup>36</sup> The Exchange proposes to modify the cross references in Rules 11.20(d)(D) and (E) to cross reference proposed Rule 11.23(b), which also contains the same text as current Rule 11.16(b)<sup>37</sup>. Lastly, the Exchange proposes to modify the cross references in Rule 14.1(b)(3) to cross reference proposed Rules 11.22 and 11.23, which collectively will replace the current Rule 11.16.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the

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<sup>33</sup> These provisions outline the processes related to Market-Wide Circuit Breaker halts.

<sup>34</sup> These provisions outline the processes related to Market-Wide Circuit Breaker testing.

<sup>35</sup> PHLX's current Rule 3101, "Trading Halts Due to Extraordinary Market Volatility" sets forth similar provisions related to Market-Wide Circuit Breakers and Market-Wide Circuit Breaker Testing. In turn, in its recent rule filing, PHLX's proposed Rule 3100(b)(ii), which would state: "The Exchange shall implement a trading halt due to extraordinary market volatility, as set forth in Rule 3101." See PHLX Proposal, supra note 13. Accordingly, the Exchange believes it consistent to include the full text of these relevant provisions in a separate rule (proposed Rule 11.23), with a cross reference to such in its proposed Rule 11.22.

<sup>36</sup> Current Rule 11.16(e) and proposed Rule 11.22(b)(1)(A)(i) govern Limit Up-Limit Down procedures.

<sup>37</sup> Current Rule 11.16(b) and proposed Rule 11.23(b) speak to Market-Wide Circuit Breaker halts.

provisions of Section 6(b) of the Act,<sup>38</sup> in general, and furthers the objectives of Sections and 6(b)(5) of the Act,<sup>39</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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.

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 Act<sup>40</sup> 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

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<sup>38</sup> 15 U.S.C. 78f(b).

<sup>39</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> Id.

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 in the security can occur on multiple exchanges that have unlisted trading privileges for the security, such as on the Exchange, or in the over-the-counter market, regulated by FINRA. The Exchange is responsible for monitoring activity on its own markets, but also must 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.

The Exchange believes that the definitions in the proposed rules are also

consistent with the Act. The Exchange proposes adding a definitions section as Rule 11.22(a) to consolidate the various definitions that will be used in the Rule, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting a modified form of the term “Extraordinary Market Activity” from the Amended Nasdaq UTP Plan, as described above. In addition, several other definitions have been moved into the definitions section from elsewhere in the current rule without changes in the definitions. As noted, certain definitions are consistent with the definitions in the Amended Nasdaq UTP Plan, furthering the Act’s goal of promoting fair and orderly markets. For example, the Exchange is proposing to adopt a definition of “SIP Halt,” to explicitly address a situation that may disrupt the markets, and this definition is identical to the definition in the Amended Nasdaq UTP Plan. In addition to “SIP Halt,” the Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: “Operating Committee,” “Operational Halt,” “Primary Listing Market,” “Processor,” “Regulatory Halt,” “Regular Trading Hours,” and “SIP Halt Resume Time,” as discussed above.

The Exchange believes that the proposed rules, which make halts more consistent across exchange rules, are consistent with the Act in that they 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 focus 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. Also consistent with the Act, and with the Amended Nasdaq UTP Plan, is the Exchange's proposal in Rule 11.22(d) to address Operational Halts, which are nonregulatory 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. The Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate. The proposed change is designed to cover situations where the impact is limited to a single market. For example, 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. Proposed Rule 11.22(d) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange: (i) if it is experiencing Extraordinary Market Activity on the Exchange; or (ii) when otherwise necessary to maintain a fair and orderly market or in the public interest. The Exchange believes that the broader language provided by the definition of Extraordinary Market Activity in proposed Rule 11.22(d) will better serve the interests of investors by allowing the Exchange to act where appropriate. Other sections of current Rule 11.16 are reorganized and retained without substantive modifications into proposed Rule 11.23, as described above.

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

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act<sup>41</sup> 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 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 non-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 and, as described earlier, the proposed Rule change clarifies 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

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<sup>41</sup> 15 U.S.C. 78f(b)(8).

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 declaration and timing of trading halts and the resumption of trading is designed to avoid any advantage to those who can react more quickly than other participants. 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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>42</sup> and Rule 19b-4(f)(6)<sup>43</sup> thereunder.

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<sup>42</sup> 15 U.S.C. 78s(b)(3)(A).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MEMX-2023-11 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-MEMX-2023-11. This file number should be included on the subject line if e-mail 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

(<https://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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-2023-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>44</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

Proposed new language is underlined; Proposed deletions are in [brackets].

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**CHAPTER 11. TRADING RULES**

\* \* \* \* \*

## Rule 11.10. Order Execution

(a) No change.

(1) – (2) No change.

(3) Compliance with the requirements of the Plan. Except as provided in Section VI of the Plan, for any executions to occur during Regular Trading Hours, such executions must occur at a price that is greater than or equal to the Lower Price Band and less than or equal to the Upper Price Band, when such Price Bands are disseminated. The Exchange's procedures for handling executing, re-pricing and displaying orders in connection with the Plan are further described in Rule 11.22(b)(1)(A)(i)[16(e)].

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## Rule 11.11 Routing Orders to Away Trading Centers

Unless the terms of the order direct the Exchange not to route such order away, if a Market Order or marketable Limit Order has not been executed in its entirety pursuant to 11.10(a)(4) above, the order shall be eligible for routing away from the Exchange.

(a) No change.

(b) The Plan. The Exchange will handle routable orders in connection with the Plan as described in Rule 11.22(b)(1)(A)(i)[16(e)].

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Rule 11.16. Reserved. [Trading Halts Due to Extraordinary Market Volatility]

(a) Trading in all stocks will halt on the Exchange and will not reopen for the time periods described in this Rule if there is a Level 1, 2, or 3 Market Decline.

(1) For purposes of this Rule, a Market Decline means a decline in price of the S&P 500® Index between 9:30 a.m. and 4:00 p.m. on a trading day as compared to the closing price of the S&P 500® Index for the immediately preceding trading day. The

Level 1, Level 2, and Level 3 Market Declines that will be applicable for the trading day will be publicly disseminated by the primary listing market before 9:30 a.m.

(2) A “Level 1 Market Decline” means a Market Decline of 7%.

(3) A “Level 2 Market Decline” means a Market Decline of 13%.

(4) A “Level 3 Market Decline” means a Market Decline of 20%.

(b) Halts in Trading.

(1) If a Level 1 Market Decline or a Level 2 Market Decline occurs after 9:30 a.m. and up to and including 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m., trading in all stocks will halt on the Exchange for 15 minutes after a Level 1 or Level 2 Market Decline. Trading in all stocks will halt on the Exchange based on a Level 1 or Level 2 Market Decline only once per trading day. Trading in all stocks will not halt on the Exchange if a Level 1 Market Decline or a Level 2 Market Decline occurs after 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m.

(2) If a Level 3 Market Decline occurs at any time during the trading day, trading in all stocks will halt on the Exchange for the remainder of the trading day.

(c) If the primary listing market halts trading in all stocks, trading will halt on the Exchange in those stocks until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen a security within 15 minutes following the end of the 15-minute halt period, the Exchange may resume trading in that security.

(d) Nothing in this Rule 11.16 should be construed to limit the ability of the Exchange to otherwise halt, suspend, or pause the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy.

(e) Limit Up-Limit Down Mechanism

(1) Definitions. All capitalized terms not otherwise defined in this paragraph (e) shall have the meanings set forth in the Plan or Exchange rules, as applicable.

(2) Exchange Participation in the Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks.

(3) Member Compliance. Members shall comply with the applicable provisions of the Plan.

(4) Exchange Compliance with the Plan. The System shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan.

(5) Re-pricing and Cancellation of Interest. Depending on a User's instructions, the System shall re-price and/or cancel buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band. When re-pricing resting orders because such orders are above (below) the Upper (Lower) Price Band, the Exchange will provide new timestamps to such orders. When re-priced to less-aggressive price levels such orders will have priority behind resting interest that was originally less aggressively priced but that was not re-priced, as such orders will retain their original timestamps.

(A) Market Orders and Orders with TIF of IOC or FOK. The System will only execute Market Orders or orders with a TIF of IOC or FOK at or within the Price Bands. Market Orders will be handled in accordance with Rule 11.8.

(B) Limit-priced Interest.

(i) Displayed Limit-priced Interest. Displayed limit-priced interest will be cancelled on entry or when resting if a User has entered instructions not to use the re-pricing process or a User has included a Reserve Quantity and such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band. If re-pricing is permitted based on a User's instructions, displayable incoming limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be re-priced to the Upper (Lower) Price Band. The System shall re-price resting, displayed limit-priced interest to buy (sell) to the Upper (Lower) Price Band if Price Bands move such that the price of resting, displayed limit-priced interest to buy (sell) would be above (below) the Upper (Lower) Price Band. If the Price Bands move again and the original limit price of displayed and re-priced interest is at or within the Price Bands and a User has opted into the Exchange's multiple price sliding process, as described in Rule 11.6(j), the System shall reprice such displayed limit interest to the most aggressive permissible price up to the order's limit price. All other displayed limit interest repriced pursuant to this paragraph (e) will remain at its new price unless the Price Bands move such that the price of resting limit-priced interest to buy (sell) would again be above (below) the Upper (Lower) Price Band.

(ii) Non-displayed Limit-priced Interest. Incoming limit-priced interest that is non-displayable will be cancelled by the System if such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band. Resting, non-displayed limit priced interest will be cancelled if such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band (i.e., aggressively priced through the applicable Price band) or if such interest is priced below (above) the Lower (Upper) Price Band (i.e., non-aggressively priced outside of the applicable Price Band).

(C) Pegged Interest. Pegged Orders to buy (sell) shall peg to the specified pegging price or the Upper (Lower) Price Band, whichever is lower (higher).

(D) Routable Orders. If routing is permitted based on a User's instructions, orders shall be routed away from the Exchange pursuant to Rule 11.11, provided that the System shall not route buy (sell) interest at a price above (below) the Upper (Lower) Price Band.

(E) Sell Short Orders. During a short sale price test restriction pursuant to Rule 201 of Regulation SHO, orders with a Short Sale instruction priced below the Lower Price Band shall be repriced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 11.6(i).

(f) On the occurrence of any trading halt, suspension or pause in trading pursuant to this Rule all outstanding orders in the System will be cancelled. While a security is subject to a halt, suspension, or pause in trading, the Exchange will not accept orders. At the end of the halt, suspension, or pause in trading, the Exchange shall re-open the security and again begin accepting orders.

(g) All times referenced in this Rule 11.16 shall be Eastern Time.

(h) Market-Wide Circuit Breaker ("MWCB") Testing.

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to paragraph (a) of Rule 2.4 to connect to the Exchange's backup systems and participate in testing of such systems are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) receive and process MWCB halt messages from the securities information processors ("SIP");

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that a Member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (h)(1)(A)-(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

(3) Members not designated pursuant to standards established in paragraph (a) of Rule 2.4 are permitted to participate in any MWCB test.

(i) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the “MWCB Working Group”), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(j) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.]

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#### Rule 11.20. Obligations of Market Makers

(a)-(c) No change.

(d) Quotation Requirements and Obligations

(1) No change.

(2) No change.

(A)-(C) No change.

(D) For purposes of this Rule, the “Designated Percentage” shall be 8% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than \$1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than \$1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.23(b)[16(b)] is not in effect, the Designated Percentage shall be 20% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than \$1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than \$1.00.

(E) For purposes of this Rule, the term “Defined Limit” shall be 9.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than \$1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down

Plan with a price less than \$1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.23(b)[16(b)] is not in effect, the Defined Limit shall be 21.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than \$1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than \$1.00.

(F)-(G) No change.

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## Rule 11.22. Limit Up-Limit Down Plan and Trading Halts on the Exchange

### (a) Definitions

(1) The term “UTP Exchange Traded Product” is defined in Rule 1.5(kk).

(A) The term “Trust Shares” means a security (a) that is based on a unit investment trust (“Trust”) which holds the securities which comprise an index or portfolio underlying a series of Trust Shares; (b) that is issued by the Trust in a specified aggregate minimum number in return for a “Portfolio Deposit” consisting of specified numbers of shares of stock plus a cash amount; (c) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the “Portfolio Deposit”; and (d) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Trust Shares, less certain expenses and other charges as set forth in the Trust prospectus.

(B) The term “Index Fund Shares” means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of specified foreign or domestic stock index; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(C) The term “Managed Fund Shares” means a security that (a) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment

Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

(D) The term "Trust Issued Receipts" means a security (a) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(2) "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 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, transaction information, or regulatory messages for a sustained period.

(3) "Operating Committee" has the same meaning as in the Nasdaq UTP Plan.

(4) "Operational Halt" has the same meaning as in the Nasdaq UTP Plan.

(5) "Post-Market Session" is defined in Rule 1.5(w).

(6) "Pre-Market Session" is defined in Rule 1.5(x).

(7) "Primary Listing Market" has the same meaning as in the Nasdaq UTP Plan.

(8) "Processor" or "SIP" have the same meaning as the term "Processor" in the Nasdaq UTP Plan or in the Consolidated Tape Association Plan, as is applicable.

(9) "Regulatory Halt" has the same meaning as in the Nasdaq UTP Plan.

(10) "Regular Trading Hours" has the same meaning as in the Nasdaq UTP Plan.

(11) “SIP Halt” has the same meaning as in the Nasdaq UTP Plan.

(12) “SIP Halt Resume Time” has the same meaning as in the Nasdaq UTP Plan.

(13) “SIP Plan” means the national market system plan governing the SIP.

(b) Regulatory Halts

(1) Authority to Implement a Regulatory Halt

(A) The Exchange shall implement a Regulatory Halt in the following circumstances, as applicable:

(i) Implementing a Trading Pause Declared by a Primary Listing Market Pursuant to the Limit Up-Limit Down Mechanism.

(a) Definitions for purposes of the Limit Up-Limit Down Mechanism.

(1) “LULD Plan” means the National Market System Plan to Address Extraordinary Market Volatility.

(2) All capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the LULD Plan or Exchange rules, as applicable.

(b) Exchange Participation in the LULD Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the LULD Plan, which establishes procedures to address extraordinary volatility in NMS Stocks.

(c) Member Compliance. Members shall comply with the applicable provisions of the LULD Plan.

(d) Exchange Compliance with the LULD Plan. The System shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the LULD Plan.

(e) Re-pricing and Cancellation of Interest. Depending on a User’s instructions, the System shall re-price or cancel buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band. When re-pricing resting orders because such orders are above (below) the Upper (Lower) Price Band, the Exchange will provide new timestamps to such orders.

When re-priced to less-aggressive price levels such orders will have priority behind resting interest that was originally less aggressively priced but that was not re-priced, as such orders will retain their original timestamps.

(1) Market Orders and Orders with TIF of IOC or FOK. The System will only execute Market Orders or orders with a TIF of IOC or FOK at or within the Price Bands. Market Orders will be handled in accordance with Rule 11.8.

(2) Limit-priced Interest.

(A) Displayed Limit-priced Interest. Displayed limit-priced interest will be cancelled on entry or when resting if a User has entered instructions not to use the re-pricing process or a User has included a Reserve Quantity and such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band. If re-pricing is permitted based on a User's instructions, displayable incoming limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be re-priced to the Upper (Lower) Price Band. The System shall re-price resting, displayed limit-priced interest to buy (sell) to the Upper (Lower) Price Band if Price Bands move such that the price of resting, displayed limit-priced interest to buy (sell) would be above (below) the Upper (Lower) Price Band. If the Price Bands move again and the original limit price of displayed and re-priced interest is at or within the Price Bands and a User has opted into the Exchange's multiple price sliding process, as described in Rule 11.6(j), the System shall reprice such displayed limit interest to the most aggressive permissible price up to the order's limit price. All other displayed limit interest repriced pursuant to this paragraph (e) will remain at its new price unless the Price Bands move such that the price of resting limit-priced interest to buy (sell) would again be above (below) the Upper (Lower) Price Band.

(B) Non-displayed Limit-priced Interest. Incoming limit-priced interest that is non-displayable will be cancelled by the System if such interest to buy (sell) is priced above (below) the

Upper (Lower) Price Band. Resting, non-displayed limit priced interest will be cancelled if such interest to buy (sell) is priced above (below) the Upper (Lower) Price Band (i.e., aggressively priced through the applicable Price band) or if such interest is priced below (above) the Lower (Upper) Price Band (i.e., non-aggressively priced outside of the applicable Price Band).

(3) Pegged Interest. Pegged Orders to buy (sell) shall peg to the specified pegging price or the Upper (Lower) Price Band, whichever is lower (higher).

(4) Routable Orders. If routing is permitted based on a User's instructions, orders shall be routed away from the Exchange pursuant to Rule 11.11, provided that the System shall not route buy (sell) interest at a price above (below) the Upper (Lower) Price Band.

(5) Sell Short Orders. During a short sale price test restriction pursuant to Rule 201 of Regulation SHO, orders with a Short Sale instruction priced below the Lower Price Band shall be repriced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 11.6(i).

(ii) The Exchange shall implement a trading halt due to extraordinary market volatility/Market-Wide Circuit Breakers, as set forth in Rule 11.23.

(iii) The Exchange shall implement a trading halt when the Primary Listing Market declares a SIP Halt or a trading halt based on Extraordinary Market Activity, as defined in the Nasdaq UTP Plan.

(iv) The Exchange will halt trading for any security traded on the Exchange when the Primary Listing Market declares a Regulatory Halt for any such security. The following shall apply when implementing Regulatory Halts initiated by the Primary Listing Market:

(a) Start Time. The start time of a Regulatory Halt is when the Primary Listing Market declares the halt, regardless of whether an issue with communications impacts the dissemination of the notice.

(2) Resumption of Trading After a Regulatory Halt

(A) Resumption of Trading After a Regulatory Halt Other Than a SIP Halt

(i) The Exchange may resume trading after the Exchange receives notification from the Primary Listing Market that the Regulatory Halt has been terminated.

(B) Resumption of Trading After a SIP Halt

(i) For securities subject to a SIP Halt initiated by another exchange that is the Primary Listing Market, during Regular Trading Hours, the Exchange 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. During Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, the Exchange may resume trading in that security. Outside Regular Trading Hours, the Exchange may resume trading immediately after the SIP Halt Resume Time.

(3) On the occurrence of any Regulatory Halt pursuant to this Rule all outstanding orders in the System will be cancelled. While a security is subject to a Regulatory Halt the Exchange will not accept orders. At the end of the Regulatory Halt the Exchange shall re-open the security and again begin accepting orders.

(c) UTP Exchange Traded Products

(1) The Exchange may halt trading in UTP Exchange Traded Products on the Exchange:

(A) Pre-Market Session. If a UTP Exchange Traded Product begins trading on the Exchange in the Pre-Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of the Intraday Indicative Value (“IIV”) or the value of the underlying index, as applicable, to such UTP Exchange Traded Product, by a major market data vendor, the Exchange may continue to trade the UTP Exchange Traded Product for the remainder of the Pre-Market Session.

(B) Regular Trading Hours. During the Regular Trading Hours, if a temporary interruption occurs in the calculation or wide dissemination of the applicable IIV or value of the underlying index by a major market data vendor and the Primary Listing Market halts trading in the UTP Exchange Traded Product, the Exchange, upon notification by the Primary Listing Market of such halt due to such temporary interruption, also shall immediately halt trading in the UTP Exchange Traded Product on the Exchange.

(C) Post-Market Session and Next Business Day's Pre-Market Session.

(i) If the IIV or the value of the underlying index continues not to be calculated or widely available after the close of the Regular Trading Hours, the Exchange may trade the UTP Exchange Traded Product in the Post-Market Session only if the Primary Listing Market traded such securities until the close of its regular trading session without a halt.

(ii) If the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Pre-Market Session on the next business day, the Exchange shall not commence trading of the UTP Exchange Traded Product in the Pre-Market Session that day. If an interruption in the calculation or wide dissemination of the IIV or the value of the underlying index continues, the Exchange may resume trading in the UTP Exchange Traded Product only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in the UTP Exchange Traded Product resumes in the Primary Listing Market.

(d) Operational Halts

(1) Authority to Initiate an Operational Halt. The Exchange may declare an Operational Halt for any security trading on the Exchange:

(A) if it is experiencing Extraordinary Market Activity on the Exchange; or

(B) when otherwise necessary to maintain a fair and orderly market or in the public interest.

(2) Initiating an Operational Halt. On the occurrence of any Operational Halt pursuant to this Rule all outstanding orders in the System will be cancelled. The Exchange will notify the SIP if it has concerns about its ability to collect and transmit Quotation Information or Transaction Reports (as those terms are defined in the Nasdaq UTP Plan), or if it has declared an Operational Halt or suspension of trading in one or more Eligible Securities (as that term is defined in the Nasdaq UTP Plan), pursuant to the procedures adopted by the Operating Committee.

(3) Resumption of Trading After an Operational Halt

(A) When the Exchange determines that trading may resume on its market in a fair and orderly manner and in accordance with its Rules it shall resume trading following an Operational Halt.

(B) During any Operational Halt, orders entered will not be accepted.

(C) Communications. Trading in a halted security shall resume at the time specified by the Exchange in a notice. The Exchange will notify all other Plan participants and the SIP of such an Operational Halt as well as provide notice that an Operational Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Exchange. If the SIP is unable to disseminate notice of an Operational Halt or the Exchange is not open for trading, the Exchange will take reasonable steps to provide notice of an Operational Halt, which shall include both the type and start time of the Operational Halt. Each Plan participant shall continuously monitor communication protocols established by the Operating Committee and the Processor during market hours to disseminate notice of an Operational Halt, and the failure of a participant to do so shall not prevent the Exchange from initiating an Operational Halt in accordance with the procedures specified herein.

Rule 11.23. Trading Halts Due to Extraordinary Market Volatility/Market-Wide Circuit Breakers

(a) Trading in all stocks will halt on the Exchange and will not reopen for the time periods described in this Rule if there is a Level 1, 2, or 3 Market Decline.

(1) For purposes of this Rule, a Market Decline means a decline in price of the S&P 500® Index between 9:30 a.m. and 4:00 p.m. on a trading day as compared to the closing price of the S&P 500® Index for the immediately preceding trading day. The Level 1, Level 2, and Level 3 Market Declines that will be applicable for the trading day will be publicly disseminated by the Primary Listing Market before 9:30 a.m.

(2) A “Level 1 Market Decline” means a Market Decline of 7%.

(3) A “Level 2 Market Decline” means a Market Decline of 13%.

(4) A “Level 3 Market Decline” means a Market Decline of 20%.

(b) Halts in Trading.

(1) If a Level 1 Market Decline or a Level 2 Market Decline occurs after 9:30 a.m. and up to and including 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m., trading in all stocks will halt on the Exchange for 15 minutes after a Level 1 or Level 2 Market Decline. Trading in all stocks will halt on the Exchange based on a Level 1 or Level 2 Market Decline only once per trading day. Trading in all stocks will not halt on the Exchange if a Level 1 Market Decline or a Level 2 Market Decline occurs after 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m.

(2) If a Level 3 Market Decline occurs at any time during the trading day, trading in all stocks will halt on the Exchange for the remainder of the trading day.

(c) If the Primary Listing Market halts trading in all stocks, trading will halt on the Exchange in those stocks until trading has resumed on the Primary Listing Market or notice has

been received from the Primary Listing Market that trading may resume. If the Primary Listing Market does not reopen a security within 15 minutes following the end of the 15-minute halt period, the Exchange may resume trading in that security.

(d) Nothing in this Rule should be construed to limit the ability of the Exchange to otherwise halt, suspend, or pause the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy.

(e) Market-Wide Circuit Breaker (“MWCB”) Testing.

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to paragraph (a) of Rule 2.4 to connect to the Exchange’s backup systems and participate in testing of such systems are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) receive and process MWCB halt messages from the securities information processors (“SIP”);

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that a Member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (h)(1)(A)-(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

(3) Members not designated pursuant to standards established in paragraph (a) of Rule 2.4 are permitted to participate in any MWCB test.

(f) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the “MWCB Working Group”), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(g) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a

modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

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## **CHAPTER 14. TRADING ON AN UNLISTED TRADING PRIVILEGES BASIS**

### **Rule 14.1. Unlisted Trading Privileges**

(a) No change.

(b) No change.

(1)-(2) No Change.

(3) Trading Halts. The Exchange will halt trading in a UTP Exchange Traded Product as provided for in Rules 11.22 and 11.23[16]. Nothing in this rule will limit the power of the Exchange under the Rules or procedures of the Exchange with respect to the Exchange's ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest.

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