

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95069; File No. SR-NASDAQ-2022-017)

June 8, 2022

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

I. Introduction

On February 22, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to modify Equity 4, Rule 4120 to add categories of regulatory and operational halts, to reorganize the remaining text of the rule, and to make conforming changes to related rules. The proposed rule change was published for comment in the Federal Register on March 11, 2022.³ On April 21, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On April 29, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed. Amendment No. 1 was published for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

⁴ 15 U.S.C. 78s(b)(2).

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

comment in the Federal Register on May 9, 2022.⁶ This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

On May 28, 2021, the Commission approved the Fiftieth Amendment to the Joint Self-Regulatory Organization Plan (“Plan”) Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“Amended UTP Plan”),⁷ which revised the Plan’s provisions that governed Regulatory Halts⁸ and Operational Halts.⁹ In particular, the Amended UTP Plan sets forth the circumstances in which a Primary Listing Market¹⁰ may declare a Regulatory Halt for any security for which it is the Primary Listing Market, and the

⁶ See Securities Exchange Act Release No. 94838 (May 3, 2022), 87 FR 27683 (“Amendment No. 1”). The Commission received one comment letter on the proposed rule change, which does not relate to the substance of the proposed rule change. The comment letter is available at <https://www.sec.gov/comments/sr-nasdaq-2022-017/srnasdaq2022017-289449.htm>.

⁷ See Securities Exchange Act Release No. 92071, 86 FR 29846 (June 3, 2021) (S7-24-89) (“Fiftieth Amendment Order”).

⁸ A “Regulatory Halt” is “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, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.” See Section X.A.10 of the Amended UTP Plan.

⁹ An “Operational Halt” is “a halt in trading in one or more securities only on a Market declared by such Participant and is not a Regulatory Halt.” See Section X.A.7 of the Amended UTP Plan.

¹⁰ The “Primary Listing Market” is “the 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.” See Section X.A.8 of the Amended UTP Plan.

factors a Primary Listing Market will consider when determining whether to declare a Regulatory Halt.¹¹ The Amended UTP Plan also sets forth the process for initiating a Regulatory Halt, including the start time of a Regulatory Halt and the dissemination of notice of a Regulatory Halt,¹² as well as the process for resuming trading after a Regulatory Halt other than a SIP Halt, including the Primary Listing Market's determination of a resumption and the resumption time.¹³ In addition, the Amended UTP Plan sets forth a specific process for resumption of trading after a SIP Halt, including the Primary Listing Market's determination of a resumption and the SIP Halt Resume Time.¹⁴ Finally, the Amended UTP Plan requires a Plan participant to notify the Processor where it has declared an Operational Halt.¹⁵

The Exchange proposes to amend Rule 4120 to incorporate provisions of the Amended UTP Plan, including the provisions that were approved as part of the Fiftieth Amendment to the Plan, and to reorganize certain existing text in Rule 4120 without substantive change other than to conform to the language of the Amended UTP Plan. The Exchange also proposes to add new text in Rule 4120 pursuant to, and to implement, the provisions of the Amended UTP Plan. Finally, the Exchange proposes to make conforming changes throughout its rules to reflect Rule 4120, as amended by this proposal.

¹¹ See Section X.C of the Amended UTP Plan. See also Section X.G of the Amended UTP Plan (requiring a Plan participant to halt trading for any security traded on its market if the Primary Listing Market declares a Regulatory Halt for the security).

¹² See Section X.D of the Amended UTP Plan. See also Section X.H of the Amended UTP Plan (setting forth further requirements for notifications of the initiation and lifting of Regulatory Halts).

¹³ See Section X.E of the Amended UTP Plan.

¹⁴ See Section X.F of the Amended UTP Plan.

¹⁵ See Section X.B of the Amended UTP Plan.

Proposed Rule 4120(a) would set forth the definitions for certain terms that are used in the rule. In particular, proposed Rule 4120(a) would incorporate certain definitions from the Amended UTP Plan¹⁶ and Commission rules,¹⁷ and would include certain relocated definitions that currently exist in Rule 4120.¹⁸ The Exchange also proposes to incorporate the definition of Regular Trading Hours from the Amended UTP Plan, which refers to the definition in Rule 600 of Regulation NMS (i.e., between 9:30 a.m. and 4:00 p.m. Eastern Time).¹⁹ This reflects a change from the Exchange’s current definition of Regular Market Session, which means the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m.²⁰ According to the Exchange, no securities currently traded on the Exchange close at 4:15 p.m. and therefore the alternative closing time reflected in the current definition of Regular Market Session is unnecessary.²¹ In connection with the proposed definition of Regular Trading Hours, the Exchange proposes to define Post-Market Session to mean the trading session that begins after Regular Trading Hours

¹⁶ Specifically, the Exchange proposes to incorporate the definitions for the following terms from the Amended UTP Plan: Extraordinary Market Activity, Material SIP Latency, Operating Committee, Operational Halt, Primary Listing Market, Processor, Regulatory Halt, SIP Halt, SIP Halt Resume Time, and SIP Outage. See Sections X.A.1, X.A.5, IV.A, X.A.7, X.A.8, III.Q, X.A.10, X.A.11, X.A.12, and X.A.13 of the Amended UTP Plan, respectively.

¹⁷ Specifically, the Exchange proposes to incorporate the definition of Trading Center from Rule 600(b)(95) of Regulation NMS. See 17 CFR 242.600(b)(95).

¹⁸ Specifically, the Exchange proposes to relocate the following definitions within Rule 4120 without substantive change: Derivative Securities Product, IPO, Pre-Market Session, and Required Value.

¹⁹ Specifically, Regulation NMS defines Regular Trading Hours as the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to 17 CFR 242.605(a)(2). See 17 CFR 242.600(b)(77).

²⁰ The Exchange proposes to make conforming changes to Rules 5710 and 5711 to replace the term “Regular Market Session” with the term “Regular Trading Hours.”

²¹ See Amendment No. 1, supra note 6, at 27694.

at approximately 4:00 p.m., and that continues until 8:00 p.m.²² According to the Exchange, this proposed definition will reflect that all securities traded on the Exchange commence their closing process at 4:00 p.m.²³ The Exchange also states that the word “approximately” in the proposed definition reflects that the Exchange’s closing cross preceding the Post-Market Session at 4:00 p.m. is not instantaneous.²⁴ Finally, the Exchange proposes to add definitions for the terms SIP²⁵ and SIP Plan.²⁶

Proposed Rule 4120(b)(1) would set forth three categories of Regulatory Halts: (a) those provided by the Amended UTP Plan;²⁷ (b) discretionary Regulatory Halts; and (3) mandatory Regulatory Halts. With respect to discretionary Regulatory Halts, the Exchange proposes to relocate, without substantive change other than to conform to the language of the Amended UTP Plan, certain existing provisions of Rule 4120 under which the Exchange may halt trading.²⁸ The

²² Currently, Post-Market Session means the trading session that begins at 4:00 p.m. or 4:15 p.m., and that continues until 8:00 p.m. See current Rule 4120(b)(4)(C).

²³ See Amendment No. 1, supra note 6, at 27686, 27689.

²⁴ See id. at 27689.

²⁵ The Exchange proposes to define SIP to have the same meaning as the term Processor in the Amended UTP Plan or in the Consolidated Tape Association Plan, as applicable. See proposed Rule 4120(a)(10).

²⁶ The Exchange proposes to define SIP Plan to mean the national market system plan governing the SIP. See proposed Rule 4120(a)(17).

²⁷ The Amended UTP Plan provides that a Primary Listing Market may declare a Regulatory Halt in trading for any security for which it is the Primary Listing Market: as provided for in the rules of the Primary Listing Market; if it determines there is a SIP Outage, Material SIP Latency, or Extraordinary Market Activity; or in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market. See Section X.C.1 of the Amended UTP Plan.

²⁸ Specifically, the Exchange proposes to relocate rule provisions relating to the following types of halts: request of certain information from the issuer (with revisions to conform to the language of the Amended UTP Plan regarding Regulatory Halts to maintain a fair and orderly market and regarding the considerations of a Primary Listing Market for initiating a Regulatory Halt); dissemination of material news; in connection with an IPO;

Exchange also proposes to incorporate the provision of the Amended UTP Plan that permits Regulatory Halts in connection with a national, regional, or localized disruption.²⁹ In addition, the Exchange proposes to delete existing rule text that describes a halt type that is obsolete³⁰ and halt types that are superseded by the new proposed text within Rule 4120.³¹

With respect to mandatory Regulatory Halts, the Exchange proposes to relocate, without substantive change, certain existing provisions of Rule 4120 under which the Exchange is required to halt trading.³² The Exchange also proposes to make clear that a trading halt due to extraordinary market volatility (i.e., the market-wide circuit breaker) is a mandatory Regulatory Halt.³³

and halt of index warrants, Derivative Securities Products, American Depositary Receipts, and other securities listed on the Exchange under specified conditions. See proposed Rule 4120(b)(1)(B). Rule 4120 currently permits the Exchange to halt trading in a security listed on the Exchange, if the security is listed on another national securities exchange and that exchange halts the security for regulatory reasons. The Exchange now proposes to remove the reference to another national securities exchange because under the Amended UTP Plan, if the Nasdaq-listed security is also listed on another national securities exchange, only the Primary Listing Market may declare a Regulatory Halt, and the Exchange would be required to halt trading in a security if its Primary Listing Market declares a Regulatory Halt. See proposed Rule 4120(b)(1)(B)(vi).

²⁹ See Section X.C.1(c) of the Amended UTP Plan.

³⁰ The Exchange proposes to delete current Rule 4120(a)(11), which has been superseded by the LULD Plan.

³¹ The Exchange proposes to delete current Rule 4120(a)(6), which would be superseded by the provisions of the Amended UTP Plan relating to Regulatory Halts due to Extraordinary Market Activity (as proposed to be incorporated within proposed Rule 4120), as well as current Rule 4120(a)(3)(A), which will be superseded by the Exchange's proposed rules governing Operational Halts.

³² Specifically, the Exchange proposes to relocate rule provisions relating to the following types of halts: Derivative Securities Products when certain information is not disseminated to all market participants at the same time; the Limit Up-Limit Down ("LULD") mechanism; and Equity Investment Tracking Stocks and Subscription Receipts under specified conditions. See proposed Rule 4120(b)(1)(C).

³³ See proposed Rule 4120(b)(1)(C)(iii).

Proposed Rule 4120(b)(2) would set forth the procedures for initiating a Regulatory Halt, which would be substantively identical to the analogous provisions in the Amended UTP Plan that were approved as part of the Fiftieth Amendment. Consistent with the Amended UTP Plan,³⁴ proposed Rule 4120(b)(2) would govern the start time of a Regulatory Halt, the notification of a Regulatory Halt, retroactive halts, consultations and considerations prior to declaring a Regulatory Halt, and evaluations after the declaration of a Regulatory Halt.³⁵

Proposed Rule 4120(b)(3) would govern the scenario where another exchange initiates a Regulatory Halt. Consistent with the Amended UTP Plan,³⁶ proposed Rule 4120(b)(3) would provide that the Exchange would halt trading for a security when the Primary Listing Market declares a Regulatory Halt for the security.³⁷ The Exchange also proposes to relocate, without substantive change, existing provisions of Rule 4120 that govern halts for Derivative Securities Products that are traded on the Exchange pursuant to unlisted trading privileges.³⁸

Proposed Rule 4120(b)(4) would set forth the process for the resumption of trading after a Regulatory Halt. With respect to Regulatory Halts other than IPO or SIP Halts, proposed Rule

³⁴ See Sections X.C.2, X.D, and X.H of the Amended UTP Plan.

³⁵ The Exchange proposes to delete current Rule 4120(c)(4), which describes the start time of a trading halt and the manner in which the Exchange disseminates notice of the commencement of a trading halt, and current Rule 4120(c)(6)(A), which describes trading halts due to extraordinary market activity. These rules would be replaced by the proposed rules that incorporate provisions of the Amended UTP Plan that govern the start time and notification of trading halts, including trading halts due to Extraordinary Market Activity.

³⁶ See Section X.G of the Amended UTP Plan.

³⁷ The Exchange proposes to delete current Rule 4120(a)(2), which permits the Exchange to halt trading in a security listed on another exchange during a trading halt imposed by such exchange to permit the dissemination of material news.

³⁸ See proposed Rule 4120(b)(3)(A)(ii).

4120(b)(4)(A) would provide for the timing and notification of resumption where the Exchange is the Primary Listing Market, consistent with the Amended UTP Plan.³⁹ The Exchange also proposes to relocate, without substantive change, existing provisions of Rule 4120 that govern the process for the resumption of trading following Regulatory Halts other than IPO or SIP halts, including specific provisions that govern the process for the resumption of trading following LULD halts.⁴⁰ Moreover, consistent with the Amended UTP Plan,⁴¹ proposed Rule 4120(b)(4)(A) would provide for the timing of a resumption where the Exchange is not the Primary Listing Market.⁴²

Proposed Rule 4120(b)(4)(B) would set forth the process for the resumption of trading after a SIP Halt. Consistent with the Amended UTP Plan,⁴³ proposed Rule 4120(b)(4)(B) would set forth the considerations for the Exchange in determining the SIP Halt Resume Time, and the Exchange's ability to delay the SIP Halt Resume Time or stagger the SIP Halt Resume Time for

³⁹ See Sections X.E.1 and X.H of the Amended UTP Plan. The Exchange proposes to delete current Rule 4120(c)(5), which describes the resumption time following a trading halt and the manner in which the Exchange disseminates notice of the resumption, and current Rule 4120(c)(6)(B), which describes resumptions following trading halts due to extraordinary market activity. These rules would be replaced by proposed rules that incorporate the provisions of the Amended UTP Plan that govern the resumption of trading following trading halts, including trading halts due to Extraordinary Market Activity.

⁴⁰ See proposed Rule 4120(b)(4)(A)(i)a-e. The Exchange also proposes to clarify that the resumption process in proposed Rule 4120(b)(4)(A)(i)a-e applies to all types of Regulatory Halts other than SIP Halts or IPO Halts. See Amendment No. 1, supra note 6, at 27691. Similarly, the Exchange proposes to amend Rule 4753(b) to specify that the halt cross process in Rule 4753 applies generally to Nasdaq-listed securities that are the subject of a trading halt or pause under Rule 4120.

⁴¹ See Section X.E.2 of the Amended UTP Plan.

⁴² See proposed Rule 4120(b)(4)(A)(ii).

⁴³ See Section X.F of the Amended UTP Plan.

multiple symbols. Also consistent with the Amended UTP Plan,⁴⁴ the Exchange would terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time.⁴⁵ As required by the Amended UTP Plan,⁴⁶ the Exchange proposes to provide a minimum five-minute notice of a SIP Halt Resume Time, during which period (“Display Only Period”) market participants may enter quotes and orders in the affected securities.⁴⁷ Also as required by the Amended UTP Plan,⁴⁸ the Exchange proposes to provide that, during Regular Trading Hours, the last SIP Halt Resume Time would be 20 minutes before the end of Regular Trading Hours (e.g., 3:40 p.m. ET).⁴⁹ The Exchange states that 20 minutes before the end of Regular Trading Hours is the latest time that the Exchange believes that it would be able to conduct an orderly halt cross process and without impacting the closing cross process.⁵⁰

For a SIP Halt initiated by the Exchange, the Exchange also proposes to use the same reopening process as for non-IPO and non-LULD Regulatory Halts, except that the Display Only Period will be a minimum of five minutes, and may be extended at the discretion of the

⁴⁴ See id.

⁴⁵ See proposed Rule 4120(b)(4)(B)(i)b.

⁴⁶ See Section X.F.2 of the Amended UTP Plan (stating that the Primary Listing Market “shall provide a minimum notice of a SIP Halt Resume Time, as specified by the rules of the Primary Listing Market, during which period market participants may enter quotes and orders in affected securities”).

⁴⁷ See proposed Rule 4120(b)(4)(B)(i)b.

⁴⁸ See Section X.F.2 of the Amended UTP Plan (stating that “[d]uring Regular Trading Hours, the last SIP Halt Resume Time before the end of Regular Trading Hours shall be an amount of time as specified by the rules of the Primary Listing Market”).

⁴⁹ See proposed Rule 4120(b)(4)(B)(i)b. If trading has not resumed by this time, the Exchange would establish its closing price in the halted securities using its contingency closing process in Rule 4754(b)(7). See Amendment No. 1, supra note 6, at 27692.

⁵⁰ See Amendment No. 1, supra note 6, at 27692.

Exchange if it believes that trading will not resume in a fair and orderly manner.⁵¹ Furthermore, as required by the Amended UTP Plan,⁵² the Exchange proposes that, for a SIP Halt initiated by the Exchange, if during Regular Trading Hours, the Exchange does not resume trading in a security for which it is the Primary Listing Market within 10 minutes after the SIP Halt Resume Time, then other markets may resume trading in that security.⁵³ The Exchange states that the proposed 10-minute time period corresponds to a 10-minute time period set forth in the LULD Plan, after which the Processor may update LULD price bands for paused securities if the primary listing market for such security is unable to reopen trading following a trading pause due to a systems or technology issue.⁵⁴

With respect to a SIP Halt initiated by another exchange that is the Primary Listing Market, during Regular Trading Hours, the Exchange would 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.⁵⁵ Consistent with the Amended UTP Plan,⁵⁶ 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

⁵¹ See proposed Rule 4120(b)(4)(B)(i)c. See also Section X.F of the Amended UTP Plan (stating that the Primary Listing Market “retains discretion to delay the SIP Halt Resume Time if it believes trading will not resume in a fair and orderly manner”).

⁵² See Section X.F.3 of the Amended UTP Plan (stating that “[d]uring Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time as specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, a Participant may resume trading in that security”).

⁵³ See proposed Rule 4120(b)(4)(B)(i)d.

⁵⁴ See Amendment No. 1, *supra* note 6, at 27692.

⁵⁵ See proposed Rule 4120(b)(4)(B)(ii).

⁵⁶ See Section X.F.3 of the Amended UTP Plan.

Exchange may resume trading in that security; and outside Regular Trading Hours, the Exchange may resume trading immediately after the SIP Halt Resume Time.⁵⁷

The Exchange proposes to relocate, without substantive change, the existing provisions of Rule 4120 that govern the process for resumption of trading following an IPO halt.⁵⁸

The Exchange proposes to adopt Rule 4120(c) to govern Operational Halts on the Exchange. Consistent with current Rule 4120, proposed Rule 4120(c)(1) would allow the Exchange to declare an Operational Halt in a security listed on the Exchange if the Primary Listing Market imposes an Operational Halt in a security that is a derivative or component of the security listed on the Exchange. Proposed Rule 4120(c)(1) would also allow the Exchange to declare an Operational Halt for a security if the Exchange itself is experiencing extraordinary market activity or when it is otherwise necessary to maintain a fair and orderly market or in the public interest. Consistent with the Amended UTP Plan,⁵⁹ proposed Rule 4120(c)(2) would require the Exchange to notify the Processor if it has concerns about its ability to collect and transmit quotation and transactions information, or where it has declared an Operational Halt or suspension of trading.

Under proposed Rule 4120(c)(3), the Exchange may resume trading following an Operational Halt when it determines that trading may resume on its market in a fair and orderly manner and in accordance with its rules.⁶⁰ As proposed, when the Exchange is the Primary

⁵⁷ See proposed Rule 4120(b)(4)(B)(ii).

⁵⁸ See proposed Rule 4120(b)(4)(C).

⁵⁹ See Section X.B of the Amended UTP Plan.

⁶⁰ As proposed, trading in a security subject to an Operational Halt would resume at the time specified by the Exchange in a notice disseminated in the same manner as a notice initiating a Regulatory Halt. See proposed Rule 4120(c)(3)(C).

Listing Market, the resumption of trading after an Operational Halt would follow the same reopening process as for a non-IPO and non-LULD Regulatory Halt.⁶¹ However, the Exchange would be able to determine to resume trading without a halt cross if it determines that such action is in the best interests of the market.⁶² According to the Exchange, in certain circumstances, a halt cross following an Operational Halt, which only applies to the Exchange, may be disruptive or result in trade-throughs.⁶³ The Exchange also states that another exchange already has the flexibility to reopen trading without an auction following an Operational Halt.⁶⁴ As proposed, when the Exchange is not the Primary Listing Market, but halted trading based on an Operational Halt initiated by the Primary Listing Market, the Exchange would be able to resume trading once it has determined that trading may be resumed in a fair and orderly manner.⁶⁵

Finally, the Exchange proposes to make non-substantive and conforming changes throughout its rules. Specifically, the Exchange proposes update its rules that currently contain cross-citations to various provisions of Rule 4120 to reflect the citations for these same

⁶¹ See proposed Rule 4120(c)(3)(A).

⁶² See id. For any Operational Halt for which a halt cross will not occur, consistent with current Rule 4120, orders entered during the halt will not be accepted, unless subject to instructions that the order will be directed to another exchange as described in Rule 4758. See proposed Rule 4120(c)(3)(B). The Exchange also proposes to make conforming changes to Rule 4753(b) to provide that, for Nasdaq-listed securities that are the subject of a trading halt or pause pursuant to Rule 4120, market hours trading will commence when the Exchange releases the security, in the case of a security for which the Exchange determines not to hold a halt cross.

⁶³ See Amendment No. 1, supra note 6, at 27693.

⁶⁴ See id.

⁶⁵ See proposed Rule 4120(c)(3)(A).

provisions in proposed Rule 4120.⁶⁶ The Exchange also proposes to remove references to the obsolete Intermarket Trading System⁶⁷ and to update references to the obsolete circuit breaker in current Rule 4120(a)(11) with references to the LULD mechanism.⁶⁸ In addition, the Exchange proposes to remove rule text relating to the applicability of Rule 4120 to dually-listed securities, because the Amended UTP Plan defines the Primary Listing Market for a dually-listed security and sets forth the role of the Primary Listing Market in trading halts.⁶⁹ Moreover, the Exchange proposes to remove rule text relating to Exchange notification of material news by issuers, which is already covered elsewhere in the Exchange's rules.⁷⁰

III. Discussion and Commission Findings

The Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,⁷¹ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

⁶⁶ See proposed changes to Rule 4702, Rule 4753, Rule 4754, IM-5315-2, IM-5405-1, IM-5505-1, and Rule 5711.

⁶⁷ See proposed changes to IM-5220.

⁶⁸ See proposed changes to Rule 5711.

⁶⁹ See proposed changes to IM-5220.

⁷⁰ See current Rule 4120(c)(1) and (2).

⁷¹ 15 U.S.C. 78f(b)(5).

open market and a national market system and, in general, to protect investors and the public interest.

As described above, the Exchange proposes to amend Rule 4120 to incorporate provisions of the Amended UTP Plan, including the provisions that were approved as part of the Fiftieth Amendment to the Plan; reorganize certain existing text in Rule 4120 without substantive change, other than to conform to the language of the Amended UTP Plan; add new text in Rule 4120 pursuant to the provisions of the Amended UTP Plan; and make conforming changes throughout its rules to reflect Rule 4120, as amended by this proposal.

In approving the Fiftieth Amendment to the Plan, the Commission stated that the amendment established a clear and uniform approach with respect to trading halts under various defined circumstances.⁷² In particular, the Commission stated that the Fiftieth Amendment provided uniform rules that govern how Plan participants will address, among other things, the initiation, implementation, and communication of trading halts, as well as the resumption of trading after a trading halt, thereby clarifying the procedures to be followed and the standards to be applied, improving coordination and certainty among the Plan participants and other market participants, and enhancing the resiliency and integrity of market systems.⁷³ The Commission also stated that the requirement for Primary Listing Markets to make good-faith determinations concerning the appropriateness of declaring a Regulatory Halt and resuming trading thereafter should promote fair and orderly markets and the protection of investors, because it encourages Primary Listing Markets to consider the broader interests of the national market system and

⁷² See Fiftieth Amendment Order, supra note 7, at 29848.

⁷³ See id.

addresses potential concerns that Primary Listing Markets may be subject to commercial pressures in making decisions to call a Regulatory Halt and resuming trading thereafter.⁷⁴

The Commission believes that the Exchange’s proposal to incorporate provisions of the Amended UTP Plan, including the provisions that were approved as part of the Fiftieth Amendment, is consistent with the goal of establishing a clear and uniform approach with respect to trading halts under various defined circumstances, improving coordination and certainty among the Plan participants and other market participants, enhancing the resiliency and integrity of market systems, and encouraging Primary Listing Markets to consider the broader interests of the national market system in declaring a Regulatory Halt and resuming trading thereafter. The Commission similarly believes that the Exchange’s proposal to reorganize the provisions of existing Rule 4120 that describe the various types of discretionary and mandatory Regulatory Halts, with changes to conform these provisions to the language of the Amended UTP Plan, is consistent with these goals.⁷⁵

As described above, the implementation of certain provisions of the Amended UTP Plan, which were approved as part of the Fiftieth Amendment, requires the Exchange to adopt certain

⁷⁴ See id.

⁷⁵ See supra notes 19-23 and accompanying text (describing the proposal to replace the term “Regular Market Session” with the term “Regular Trading Hours” and to make conforming and clarifying changes to the definition of “Post-Market Session”) and note 28 and accompanying text (describing the proposal to amend Rule 4120 to conform to the fair and orderly market standard for Regulatory Halts in the Amended UTP Plan and to reflect that, under the Amended UTP Plan, only the Primary Listing Market may declare a Regulatory Halt, and the Exchange would be required to halt trading in a security if its Primary Listing Market declares a Regulatory Halt). Also as described above, the Exchange proposes to add the market-wide circuit breaker halt as a type of mandatory Regulatory Halt. See supra note 33 and accompanying text.

rules.⁷⁶ In accordance with these provisions of the Amended UTP Plan, the Exchange proposes to adopt a five-minute minimum notice and Display Only Period for a SIP Halt Resume Time, which is consistent with the minimum length of the Display Only Period that the Exchange applies to certain other types of Regulatory Halts.⁷⁷ The Exchange also proposes to establish the last SIP Halt Resume Time as 20 minutes before the end of Regular Trading Hours, which is designed to allow the Exchange to conduct an orderly halt cross process before the end of Regular Trading Hours and without impacting the closing cross process.⁷⁸ Moreover, the Exchange proposes to provide a 10-minute waiting period for other markets to resume trading in a security, if the Exchange is the Primary Listing Market for the security and does not resume trading following the SIP Halt Resume Time, which is similar to a waiting period that is currently in the LULD Plan. The Commission believes that these aspects of the proposal are reasonably designed to allow the Exchange to implement the Fiftieth Amendment to the Plan.

Furthermore, as described above, the Exchange proposes to specify in Rule 4120(c) the circumstances under which it may declare an Operational Halt (which applies only to trading on the Exchange), as well as the process for initiating an Operational Halt and resuming trading following an Operational Halt. The Exchange proposes to use the existing halt cross process to reopen trading following an Operational Halt, although the Exchange would be permitted to reopen trading following an Operational Halt without a halt cross if it determines such action to be in the best interest of the market. The Commission believes that the proposed rules governing

⁷⁶ See supra notes 46-54 and accompanying text.

⁷⁷ See current Rule 4120(c)(7).

⁷⁸ As described above, for a SIP Halt initiated by the Exchange, the Exchange proposes to resume trading using the same reopening process as for non-IPO and non-LULD Regulatory Halts. See supra note 51 and accompanying text.

Operational Halts on the Exchange are reasonably designed to allow the Exchange to halt trading (which applies only to trading on the Exchange) when there are unusual conditions with respect to trading on the Exchange and when necessary to main a fair and orderly market on the Exchange.⁷⁹ The Commission also believes that the proposed rules would allow the Exchange to resume trading following an Operational Halt in a fair and orderly manner using the Exchange's established halt cross process, while providing the Exchange the ability to reopen trading without a halt cross if that is in the best interest of the market, including when trading has continued in a fair and orderly manner on other markets.

Finally, the Commission believes that the proposed non-substantive and conforming changes would remove obsolete or superseded text from the Exchange's rules⁸⁰ and ensure internal consistency within the Exchange's rules.⁸¹

⁷⁹ The Exchange currently has authority under its bylaws to implement an Operational Halt under certain circumstances. See Article IX, Section 5 of the Exchange's By-Laws (stating that the Exchange board, or such person or persons as may be designated by the board, in the event of an emergency or extraordinary market conditions, has the authority to take any action regarding the trading in or operation of the Exchange).

⁸⁰ See supra notes 30-31 (describing the deletion of rule provisions that are superseded by the LULD Plan, the Amended UTP Plan, and the proposed rules on Operational Halts), notes 35 and 39 (describing the deletion of rule provisions that are superseded by the Amended UTP Plan), notes 67-68 and accompany text (describing the deletion of references to the obsolete Intermarket Trading system and circuit breaker), and note 70 and accompanying text (describing the deletion of rule provisions that are covered elsewhere in the Exchange's rules).

⁸¹ See supra note 66 and accompany text (describing updates to the cross-citations to the provisions within Rule 4120) and note 69 and accompany text (describing deletions to ensure consistency with the definition and role of the Primary Listing Market under the Amended UTP Plan). See also supra note 40 (describing the proposal to relocate the provisions of existing Rule 4120 that describe the reopening process following a Regulatory Halt, with a proposed change to clarify the applicability of the process to the various types of Regulatory Halts, and the proposal to amend Rule 4753(b) to specify that the halt cross process in Rule 4753 applies generally to Nasdaq-listed securities that are the subject of a trading halt or pause in Rule 4120).

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸² that the proposed rule change (SR-NASDAQ-2022-017), as modified by Amendment No. 1, be, and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸³

J. Matthew DeLesDernier
Assistant Secretary

⁸² 15 U.S.C. 78s(b)(2).

⁸³ 17 CFR 200.30-3(a)(12).