



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97824; File No. SR-MEMX-2023-11]

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

June 29, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 23, 2023, 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 Act⁴ and Rule 19b-4(f)(6) thereunder.⁵ 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

to related rules. The text of the proposed rule change is provided in Exhibit 5.

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

1. Purpose

In conjunction with adoption of an amended Nasdaq UTP Plan proposed by its participants (“Amended Nasdaq UTP Plan”),⁶ 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.⁷ The Exchange proposes to replace Rule 11.16, entitled Trading

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

⁷ 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

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").⁸ 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.⁹ These include confirming that the security

in Nasdaq's proposal, are not included herein.

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

⁹ 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."

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

¹⁰ 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.

¹¹ See proposed Rule 11.22(a)(9).

Nasdaq UTP Plan. The Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: “Operating Committee,” “Operational Halt,” “Primary Listing Market,” “Processor,”¹² “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.¹³ 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.¹⁴

First, the Exchange proposes to add the definition of “Primary Listing Market”¹⁵ 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

¹² 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.

¹³ “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).

¹⁴ 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.

¹⁵ See proposed Rule 11.22(a)(7).

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 11.22,¹⁶ which would represent a modified version of the term defined in the Amended Nasdaq UTP Plan, Section X.A.1.¹⁷ Specifically, the Exchange proposes 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).¹⁸ 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

¹⁶ See proposed Rule 11.22(a)(2).

¹⁷ 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.

¹⁸ 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.

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.¹⁹ In addition, the Exchange is proposing to define terms related to SIP governance needed in order to understand these definitions:

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

¹⁹ 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.

²⁰ See proposed Rule 11.22(a)(8).

²¹ See proposed Rule 11.22(a)(13).

²² See proposed Rule 11.22(a)(3).

²³ See proposed Rule 11.22(a)(11).

Halt in one or more securities as a result of a SIP outage²⁴ or material SIP latency.²⁵

The Exchange proposes to add a definition of “Regulatory Halt”²⁶ 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,”²⁷ 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.²⁸ 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

²⁴ 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.

²⁵ 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.

²⁶ See proposed Rule 11.22(a)(9).

²⁷ See proposed Rule 11.22(a)(4).

²⁸ See Exchange Rules 11.1(c) and 11.16(d).

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.²⁹ 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

²⁹ This is consistent with the Amended Nasdaq UTP Plan. See Amended Nasdaq UTP Plan, Section X.D.1.

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,³⁰ and certain parts of the complex process of reopening trading after a SIP Halt. With respect to a SIP Halt, common elements of the reopening process include the interaction among SROs (including the Primary Listing Market with the SIP), the requirement that the Primary Listing Market terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time, the minimum quoting times before resumption of trading, the cutoff time after which trading would not resume during Regular Trading Hours, and the time when trading may resume if the Primary Listing Market does not open a security within the amount of time specified in its rules after the SIP Halt Resume Time. Proposed Rule 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;

³⁰ See Partial Amendment No. 1 of Trading Halt Amendments to the UTP Plan, dated March 31, 2021.

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.³¹ 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

³¹ See Partial Amendment No. 2 of Trading Halt Amendments to the UTP Plan, dated April 7, 2021.

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.³² 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 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 Activity³³ 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

³² 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.

³³ "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.

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 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)³⁴ and Rule 11.16(h)-(j)³⁵. 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.³⁶

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).³⁷ 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)³⁸. 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 provisions of Section 6(b) of the Act,³⁹ in general, and furthers the objectives of Sections and 6(b)(5) of the

³⁴ These provisions outline the processes related to Market-Wide Circuit Breaker halts.

³⁵ These provisions outline the processes related to Market-Wide Circuit Breaker testing.

³⁶ 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.

³⁷ Current Rule 11.16(e) and proposed Rule 11.22(b)(1)(A)(i) govern Limit Up-Limit Down procedures.

³⁸ Current Rule 11.16(b) and proposed Rule 11.23(b) speak to Market-Wide Circuit Breaker halts.

³⁹ 15 U.S.C. 78f(b).

Act,⁴⁰ 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 Act⁴¹ because they will foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities.

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

⁴⁰ 15 U.S.C. 78f(b)(5).

⁴¹ Id.

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 Act⁴² 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

⁴² 15 U.S.C. 78f(b)(8).

proposals to have any competitive impact whatsoever. Indeed, the Exchange expects that other exchanges will adopt similar rules and procedures to govern operational halts, to the extent that they have not done so already. The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally. In addition, information regarding the halting and resumption of trading will be disseminated using several freely accessible sources to ensure broad availability of information in addition to the SIP data and proprietary data feeds offered by the Exchange and other SROs that are available to subscribers. In addition, the 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 Act⁴³ and Rule 19b-4(f)(6)⁴⁴ thereunder.

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

⁴³ 15 U.S.C. 78s(b)(3)(A).

⁴⁴ 17 CFR 240.19b-4.

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 email to 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 in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2023-11 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

J. Lynn Taylor,

Assistant Secretary.

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⁴⁵ 17 CFR 200.30-3(a)(12).