

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92071; File No. S7-24-89)

May 28, 2021

Joint Industry Plan; Order Approving the Fiftieth Amendment to 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 Privileges Basis, as Modified by Amendment Nos. 1 and 2

I. Introduction

On February 11, 2021,¹ 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 Privileges Basis (“Nasdaq/UTP Plan” or “Plan”)² participants³ filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 11A of the Securities Exchange Act of 1934

¹ See Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Feb. 11, 2021). The Amendment was posted to the Plan’s website on February 12, 2021. See E-mail from James P. Dombach, Counsel to the Plan, to Michael E. Coe, Assistant Director, Commission (Feb. 12, 2021).

² The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. See Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

³ These participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors’ Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (each a “Participant,” and collectively the “Participants”).

(“Act”)⁴ and Rule 608 of Regulation National Market System (“NMS”) thereunder,⁵ a proposal to amend the Nasdaq/UTP Plan. This amendment represents the Fiftieth Amendment to the Plan (“Amendment”).

The Amendment was published for comment in the Federal Register on March 1, 2021.⁶ One comment letter was received.⁷ On March 31, 2021, a partial amendment was filed to correct an inadvertent error in the rule text.⁸ On April 7, 2021, a second partial amendment was filed to correct an inadvertent error in the rule text.⁹ This order approves the Amendment to the Plan, as modified by Amendment Nos. 1 and 2.

⁴ 15 U.S.C 78k-1(a)(3).

⁵ 17 CFR 242.608.

⁶ See Securities Exchange Act Release No. 91190 (Feb. 23, 2021), 86 FR 12045 (Mar. 1, 2021) (“Notice”); Securities Exchange Act Release No. 91190A (Mar. 3, 2021), 86 FR 13411 (Mar. 8, 2021) (correction of a typographical error in the header).

⁷ Comments received in response to the Notice are available at <https://www.sec.gov/comments/s7-24-89/s72489.shtml>

⁸ See Letter from James P. Dombach, Counsel to the Plan, to Vanessa Countryman, Secretary, Commission (Mar. 31, 2021) (to correct language inadvertently omitted by the Participants in Section X.E.1 of the Plan, as amended, to state that “[t]he Primary Listing Market will declare a resumption of trading when it makes a good-faith determination that trading may resume in a fair and orderly manner and in accordance with its rules.”) (“Amendment No. 1”).

⁹ See Letter from James P. Dombach, Counsel to the Plan, to Vanessa Countryman, Secretary, Commission (Apr. 7, 2021) (to correct language inadvertently omitted by the Participants from the last sentence in Section X.F.3 of the Plan, as amended, to state that “[o]utside Regular Trading Hours, a Participant may resume trading immediately after the SIP Halt Resume Time.”) (“Amendment No. 2”).

II. Description of the Proposal, as Modified by Amendment Nos. 1 and 2

The Amendment proposes revisions to the Plan’s provisions governing Regulatory Halts¹⁰ and Operational Halts.¹¹ The Participants state that “[t]he purpose of the amendment is to incorporate into the UTP Plan the same processes for Regulatory Halts that are proposed by the equity exchanges.”¹²

A. Regulatory Halts

1. Declaration of a Regulatory Halt

With respect to declaration of a Regulatory Halt, the Amendment would provide that the Primary Listing Market¹³ may declare a Regulatory Halt in trading for any security for which it is the Primary Listing Market (1) as provided for in the rules of the Primary Listing Market¹⁴; (2) if it

¹⁰ The Amendment would define “Regulatory Halt” as “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 Plan, as amended.

¹¹ The Amendment would define “Operational Halt” as “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 Plan, as amended.

¹² See Notice, supra note 6, 86 FR at 12046.

¹³ The Amendment would define “Primary Listing Market” as “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 Plan, as amended.

¹⁴ See Section X.C.1(a) of the Plan, as amended.

determines¹⁵ there is a SIP Outage,¹⁶ Material SIP Latency,¹⁷ or Extraordinary Market Activity¹⁸; or (3) in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.¹⁹

The Amendment would further provide that, in determining whether to declare a Regulatory Halt, the Primary Listing Market will consider the totality of information available concerning the severity of the issue, its likely duration, and potential impact on Member Firms and other market

¹⁵ See Section X.C.1(b) of the Plan, as amended.

¹⁶ The Amendment would define “SIP Outage” as “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 Section X.A.13 of the Plan, as amended.

¹⁷ The Amendment would define “Material SIP Latency” as “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 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 Section X.A.5 of the Plan, as amended.

¹⁸ The Amendment would define “Extraordinary Market Activity” as “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, transaction information, or regulatory messages for a sustained period.” See Section X.A.1 of the Plan, as amended.

¹⁹ See Section X.C.1(c) of the Plan, as amended.

participants, and will make a good-faith determination that the criteria to declare a Regulatory Halt have been satisfied and that a Regulatory Halt is appropriate.²⁰ The Amendment would also provide that, the Primary Listing Market will consult, if feasible, with the affected Trading Center(s), other Participants, or the Processor, as applicable, regarding the scope of the issue and what steps are being taken to address the issue, and that the Primary Listing Market will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the Primary Listing Market.²¹

2. Initiating a Regulatory Halt

The Amendment would specify procedures for initiating a Regulatory Halt. Specifically, when initiating a Regulatory Halt, the start time of a Regulatory Halt would be when the Primary Listing Market declares the halt, regardless of whether an issue with communications impacts the dissemination of the notice.²² The Amendment would further provide that if the Processor is unable to disseminate notice of a Regulatory Halt or the Primary Listing Market is not open for trading, the Primary Listing Market will take reasonable steps to provide notice of a Regulatory Halt, which shall include both the type and start time of the Regulatory Halt, by dissemination through: (1) proprietary data feeds containing quotation and last sale price information that the Primary Listing Market also sends to the Processor; (2) posting on a publicly-available Participant website; or (3)

²⁰ See Section X.C.2 of the Plan, as amended.

²¹ See id. The Amendment would further provide that once a Regulatory Halt has been declared, the Primary Listing Market will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the Primary Listing Market. See id.

²² See Section X.D.1 of the Plan, as amended.

system status messages.²³ The Amendment would further specify that a Participant will halt trading for any security traded on its Market if the Primary Listing Market declares a Regulatory Halt for the security.²⁴

3. Resumption of Trading After a Regulatory Halt

The Amendment would specify certain procedures for the resumption of trading following (1) Regulatory Halts other than a SIP Halts and (2) SIP Halts.²⁵

a. Resumption of Trading After a Regulatory Halt other than a SIP Halt

With respect to the resumption of trading after a Regulatory Halt other than a SIP Halt, the Amendment would provide that the Primary Listing Market will declare a resumption of trading when it makes a good-faith determination that trading may resume in a fair and orderly manner and in accordance with its rules.²⁶ The Amendment would further provide that for a Regulatory Halt that is initiated by another Participant that is a Primary Listing Market, a Participant may resume trading after the Participant receives notification from the Primary Listing Market that the Regulatory Halt has been terminated.²⁷

²³ See Section X.D.2 of the Plan, as amended. The Amendment would further provide that, except in exigent circumstances, the Primary Listing Market will not declare a Regulatory Halt retroactive to a time earlier than the notice of such halt. See Section X.D.3 of the Plan, as amended.

²⁴ See Section X.G of the Plan, as amended.

²⁵ The Amendment would define “SIP Halt” as “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.” See Section X.A.11 of the Plan, as amended.

²⁶ See Section X.E.1 of the Plan, as amended.

²⁷ See Section X.E.2 of the Plan, as amended.

b. Resumption of Trading After a SIP Halt

With respect to the resumption of trading after a SIP Halt, the Amendment would provide that the Primary Listing Market will determine the SIP Halt Resume Time.²⁸ The Amendment would further provide that, in making such determination, the Primary Listing Market will make a good-faith determination and consider the totality of information to determine whether resuming trading would promote a fair and orderly market, including input from the Processor, the Operating Committee, or the operator of the system in question (as well as any Trading Center(s) to which such system is linked), regarding operational readiness to resume trading.²⁹ The Amendment would also provide 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.³⁰ Also with respect to termination of the SIP Halt, the Amendment would provide that the Primary Listing Market will terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time.³¹ The Amendment would further provide 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 the affected securities.³² Under the Amendment,

²⁸ See Section X.F.1 of the Plan, as amended. The Amendment would define “SIP Halt Resume Time” as “the time that the Primary Listing Market determines as the end of a SIP Halt.” See Section X.A.12 of the Plan, as amended.

²⁹ See id.

³⁰ See id.

³¹ See Section X.F.2 of the Plan, as amended.

³² See id. The Amendment would further provide that, during 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. See id.

the Primary Listing Market would be permitted to stagger the SIP Halt Resume Times for multiple symbols in order to reopen in a fair and orderly manner.³³

Finally, the Amendment would provide that during 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.³⁴ Under the Amendment, a Participant may, outside Regular Trading Hours, resume trading immediately after the SIP Halt Resume Time.³⁵

B. Communications

The Amendment addresses communications regarding trading halts. Specifically, the Amendment would provide that, whenever in the exercise of its regulatory functions, the Primary Listing Market for an Eligible Security determines it is appropriate to initiate a Regulatory Halt, the Primary Listing Market will notify all other Participants and the Processor of such Regulatory Halt and will provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Primary Listing Market.³⁶ The Amendment would further provide that the Processor shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a Regulatory Halt) through (i) the Quote Data Feed and the Trade Data Feed and (ii) any other means the Processor, in its sole discretion, considers appropriate. Under the Amendment, each Participant

³³ See id.

³⁴ See Section X.F.3 of the Plan, as amended.

³⁵ See id.

³⁶ See Section X.H of the Plan, as amended.

would be required to continuously monitor these communication protocols established by the Operating Committee and the Processor during market hours.³⁷

C. Operational Halts

With respect to Operational Halts,³⁸ the Amendment would provide that a Participant must notify the Processor if it has concerns about its ability to transmit Quotation Information or Transaction Reports, or where 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.³⁹

III. Discussion and Commission Findings

After careful review, the Commission is approving the Amendment, as modified by Amendment Nos. 1 and 2, for the reasons discussed below. Section 11A of the Act authorizes the Commission, by rule or order, to authorize or require the self-regulatory organizations to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a facility of the national market system.⁴⁰ Pursuant to this authority, the Commission adopted Regulation NMS.⁴¹ Rule 603 of Regulation NMS requires the SROs to act jointly pursuant to NMS plans to “disseminate consolidated information, including a national best

³⁷ See id. The Amendment would further provide that the failure of a Participant to continuously monitor such communication protocols as established by the Operating Committee and the Processor during market hours will not prevent the Primary Listing Market from initiating a Regulatory Halt in accordance with the procedures specified in the Amendment. See id.

³⁸ See supra note 11 and accompanying text.

³⁹ See Section X.B. of the Plan, as amended.

⁴⁰ See 15 U.S.C. 78k-1(a)(3)(B).

⁴¹ 17 CFR 242.600-612; see also Regulation NMS, Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37560 (June 29, 2005).

bid and national best offer, on quotations for and transactions in NMS stocks.”⁴² And Rule 608 of Regulation NMS authorizes two or more SROs, acting jointly, to file with the Commission a national market system plan (“NMS plan”) or a proposed amendment to an effective NMS plan.⁴³ Rule 608 further provides that the Commission shall approve an amendment to an NMS plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.⁴⁴

As stated above, the Commission received one comment letter regarding the proposed Amendment. The commenter states that the Amendment should be approved as filed.⁴⁵ According to the commenter, the purpose of the Amendment is to incorporate into the Plan the same processes for Regulatory and Operational Halts that are proposed by the equity exchanges, including that the Primary Listing Market be vested with the authority to determine when to initiate and end a Regulatory Halt, consistent with its rules.⁴⁶ The commenter states that the Primary Listing Market would be enabled to declare a Regulatory Halt as provided for in the Primary Listing Market’s rules, if it determines that there is a SIP Outage, Material SIP Latency, Extraordinary Market Activity, or in the event of national, regional, or localized disruption that necessitates a Regulatory

⁴² 17 CFR 242.603(b).

⁴³ See 17 CFR 242.608.

⁴⁴ See 17 CFR 242.608(b)(2).

⁴⁵ See Letter from Elizabeth K. King, Chief Regulatory Officer, ICE and General Counsel and Corporate Secretary, NYSE Group, Inc., to Vanessa Countryman, Secretary, Commission, at 2 (Mar. 18, 2021) (“NYSE Letter”).

⁴⁶ See id.

Halt to maintain a fair and orderly market. The commenter states that the Commission should thus approve the Amendment because it is consistent with the Act and Rule 608 thereunder.⁴⁷

The Commission agrees that the Amendment, as modified by Amendment Nos. 1 and 2, is consistent with the Act and Rule 608 of Regulation NMS.⁴⁸ The Commission believes that the Amendment, as modified by Amendment Nos. 1 and 2, furthers the goals of Section 11A of the Act and of Rules 603 and 608 of Regulation NMS by establishing a clear and uniform approach with respect to trading halts under various defined circumstances. The Plan's provisions currently lack clarity with respect to whether a Primary Listing Market may declare a Regulatory Halt due to underlying problems at the SIP, as well as the standard and process for calling a halt and resuming trading thereafter. The Amendment—and in particular the revisions that address Regulatory Halts in connection with SIP Outages, Material SIP Latency, Extraordinary Market Activity, and national, regional, or localized disruptions that necessitate a Regulatory Halt to maintain a fair and orderly market—address this shortcoming by providing for uniform rules governing how 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 or SIP Halt, thereby clarifying the procedures to be followed and the standards to be applied, improving coordination and certainty among the Participants and other market participants, and enhancing the resiliency and integrity of market systems. Accordingly, the Commission believes that the Amendment, as modified by Amendments Nos. 1 and 2, is in the public interest, supports the protection of investors, and helps the maintenance of fair and orderly markets because the Amendment, as modified by Amendment Nos. 1 and 2, is reasonably designed to assist market participants in understanding the processes to

⁴⁷ See id.

⁴⁸ See 17 CFR 242.608.

be followed during circumstances potentially warranting a regulatory halt, such as events involving the loss, timeliness, or accuracy of information that is processed or disseminated by the SIPs. Additionally, the Commission believes that the Amendment, as modified by Amendments Nos 1 and 2, is reasonably designed to enhance the resiliency of the national market system by clearly memorializing the coordinated actions to be taken by the Participants during such events so that trading may resume in a fair and orderly manner.

The Commission further believes that the proposed requirement for Primary Listing Markets to make good-faith determinations⁴⁹ in consultation with other market participants, as may be applicable concerning the appropriateness of declaring a regulatory halt and resuming trading thereafter, should promote fairness and orderliness in decision-making by the Primary Listing Markets. In particular, the good-faith determination standard promotes fair and orderly markets and the protection of investors because it 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. Accordingly, the Commission believes that the good-faith-determination standard encourages Primary Listing Markets to consider the broader interests of the national market system with respect to declaring trading halts and resuming trading thereafter, thereby promoting the maintenance of fair and orderly markets and enhancing the protection of investors.⁵⁰

⁴⁹ See, e.g., Sections X.C.2; X.E.1; X.F.1 of the Plan, as amended.

⁵⁰ This commenter also urges the Commission to publish and provide notice of any material changes that the Commission is considering with respect to the Amendments. See NYSE Letter, supra note 45, at 2. The Commission has determined to approve the Amendment without modification.

For the reasons discussed, the Commission finds that the Amendment to the Nasdaq/UTP Plan, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder, and in particular, Section 11A of the Act⁵¹ and Rule 608⁵² thereunder in that the Amendment, as modified by Amendment Nos. 1 and 2, is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. Section 11A of the Act⁵³ sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure the prompt, accurate, reliable and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information. The Commission believes that the Amendment, as modified by Amendment Nos. 1 and 2, furthers these goals set forth by Congress.

⁵¹ 15 U.S.C. 78k-1.

⁵² 17 CFR 242.608.

⁵³ 15 U.S.C. 78k-1(c)(1)(B).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,⁵⁴ and Rule 608(b)(2) thereunder,⁵⁵ that the Fiftieth Amendment to the Nasdaq/UTP Plan, as modified by Amendment Nos. 1 and 2, (File No. S7-24-89) is approved.

By the Commission.

J. Matthew DeLesDernier
Assistant Secretary

⁵⁴ 15 U.S.C. 78k-1.

⁵⁵ 17 CFR 242.608(b)(2).