

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75505; File No. S7-24-89)

July 22, 2015

Joint Industry Plan; Order Approving Amendment No. 35 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 Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

I. Introduction

On April 27, 2015, the operating committee (“Operating Committee” or “Committee”)¹ of 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”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”),² and Rule 608 thereunder,³ a proposal to amend the Nasdaq/UTP Plan.⁴ The proposal represents the 35th Amendment to the Plan (the “Amendment”), and

¹ The Plan Participants (collectively the “Participants”) are the: BATS Exchange, Inc.; BATS Y-Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc. (“FINRA”); International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc.

² 15 U.S.C. 78k-1.

³ 17 CFR 240.608.

⁴ The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of 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

reflects changes unanimously adopted by the Participants. The Amendment requires the Participants to include timestamps in the trade-report and bid-and-offer information that they report to the Plan's processor. The proposed Amendment was published for comment in the Federal Register on May 14, 2015.⁵ The Commission received one comment letter in response to the Notice.⁶ On July 17, 2015, the Participants to the Plan responded to the comment letter.⁷ This order approves the proposed Amendment to the Plan.

II. Description of the Proposal

Currently, Section VIII of the UTP Plan (Transmission of Information to Processor by Participants) requires transaction reports that the Participants to submit to the Processor to include (1) the identification of the security, (2) the price bid and offered, together with size, (3) the FINRA Participant along with the FINRA Participant's market participant identification or Participant from which the quotation emanates, (4) identification of quotations that are not firm, and (5) through appropriate codes and messages, withdrawals and similar matters.

Section VIII also requires each Participant to promptly collect and transmit to the Processor trade reports executed in its market that include (1) identification of the security, (2) the number of shares in the transaction, (3) the price at which the shares were purchased or sold, (4) the buy/sell/cross indicator, (5) the market of execution, and (6) through appropriate codes

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 (April 19, 2007) 72 FR 20891 (April 26, 2007).

⁵ See Securities Exchange Act Release No. 74910 (May 8, 2015), 80 FR 27713 ("Notice").

⁶ See Letter from Theodore R. Lazo, Managing Director and Associate Director, SIFMA, to Brent J. Fields, Secretary, Commission, dated June 5, 2015 ("SIFMA Letter") commenting on this proposal as well as the parallel amendment to the CTA and CQ Plans.

⁷ See Letter from Emily Kasparov, Chairman, CTA Plan Operating Committee to Brent J. Fields, Secretary, Commission, dated July 17, 2015 ("Response Letter").

and messages, late or out-of-sequence trades, corrections and similar matters.

The Amendment proposes to require Participants to include in quotation information and trade reports to the Processor the time of the trade or the quotation. In the case of a Participant that is a national securities exchange, the time of the transaction or quotation is to be reported in microseconds as identified in the Participant's matching engine publication timestamp. In the case of FINRA, the time of a transaction will be the time of execution that a FINRA member reports to a FINRA trade reporting facility and the time of a bid or offer will be the quotation publication timestamp that the bidding or offering member reports to the FINRA quotation facility, all in accordance with FINRA rules.⁸ In addition, if a FINRA trade reporting facility or quotation facility provides a proprietary feed of trades or quotes reported by the facility to the Processor, then the FINRA facility must also furnish the Processor with the time of the transmission as published on the facility's proprietary feed.

III. Summary of Comment Letter and Participants' Response

The Commission received one comment letter on the proposed Amendment and a response to that comment letter from the Participants. The commenter supports the proposed Amendment, but suggested clarifications to certain aspects of the Amendment.

First, in order to ensure that sourcing and reporting of timestamp data would be consistent across exchanges, the commenter recommended that the Amendment provide a clearer definition of "matching engine publication timestamp."⁹ The commenter stated that the term "matching engine publication timestamp" is not defined in the Plans or in the proposal,

⁸ If a FINRA member reports to it in seconds or milliseconds, FINRA must convert the times to microseconds and must furnish the Processor the reports in microseconds.

⁹ See SIFMA Letter at 3.

and is not a commonly understood term.¹⁰ The commenter suggested that the transaction time to be reported to the Securities Information Processors (“SIPs”) should be the timestamp applied when the trade is executed in the exchange’s matching engine, and the quotation time should be the timestamp applied when the quotation is added to the exchange’s order book.¹¹ The commenter further stated that the timestamp reported by the exchange should reflect the actual underlying matching engine event, and not any internal processing that may occur at the exchange before submission to the SIPs.¹² In response to the comment that the “matching engine publication timestamps” be more clearly defined, the Participants stated that the purpose of the Amendment is to respond to the Commission’s request to provide information allowing market participants to compare proprietary data feed latency to consolidated data feed latency.¹³ The Participants noted that they devoted considerable effort and resources to expedite this timestamp initiative at Chair White’s request. The Participants use the proposed term of “matching engine publication timestamps” to connote the timestamp published by each Participant’s matching engine. The Participants believe that the proposal will provide transparency that will enable market participants to compare the latency between the proprietary data feed and the consolidated data feed, which the Participants believe the industry will find most useful.¹⁴

Next, the commenter stated that the proposed Amendment should provide clarity on the

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ See Response Letter at 2-3.

¹⁴ See Response Letter 3-4.

timestamp information that FINRA would be required to provide to the SIPs.¹⁵ As proposed, any FINRA proprietary data feed of trades or quotes reported by the FINRA trade reporting facility (“TRF”) to the SIPs would be required to furnish the SIPs with the time of the transmission as published on the proprietary feeds. The commenter suggested that the Amendment should require the FINRA TRF or quotation facility to provide to the SIPs the timestamp when the trade or quote was processed by the FINRA facility regardless of whether the facility offers a proprietary feed.¹⁶ In response, the Participants stated that additional timestamps for non-proprietary FINRA feeds would not provide meaningful information to market participants because they would not enable a market participant to compare the time that a Participant transmits information via a proprietary feed to the time the SIP transmits the same information.¹⁷ Additionally, the Participants stated that FINRA TRFs or quotation facilities should not include intermediate processing timestamps because such additional timestamps go beyond the scope of the Amendment’s objectives and that requiring these additions would be costly and time consuming.¹⁸ The Participants noted that additional timestamps would delay the rollout of the timestamp initiative considerably, impose a significant cost on the industry, require specialized equipment, add significant bandwidth requirements, and result in an array of timestamps that would likely lead to confusion within the industry.¹⁹

Additionally, the commenter believes that the SIPs should be responsible for market-wide

¹⁵ See SIFMA Letter at 1, 3.

¹⁶ See SIFMA Letter at 3.

¹⁷ See Response Letter at 3.

¹⁸ See Response Letter at 3-4.

¹⁹ Id.

determinations of whether a trade is reported out of sequence and not last sale eligible.²⁰ The commenter suggested that the SIPs should make market-wide determinations if transactions are out of sequence by comparing the incoming transaction's execution time against the execution time of the most recent transaction that was last sale eligible and published. The Participants stated that the Participants have historically determined last sale eligibility and out of sequence reporting pursuant to their own rules²¹ and believe that such determinations should continue to be made by the Participants consistent with their respective rules.²² In addition, the Participants noted that this suggestion is outside the scope of the Amendment.²³

IV. Discussion and Commission Findings

After careful review and consideration of the proposed Amendment, the comment letter, and the Response Letter, the Commission finds that the proposed Amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder,²⁴ and, in particular, Section 11A(a)(1) of the Act²⁵ and Rule 608 thereunder²⁶ in that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and

²⁰ See SIFMA Letter at 3.

²¹ See Response Letter at 4.

²² The commenter also called for change in the governance structure of NMS plans which it states is ineffective and opaque, suggesting that governing bodies of NMS plans should include representatives from broker-dealers, asset managers, and the public, with each of these groups having voting power on the plans' operating committees. See SIFMA Letter at 4. The Participants noted that the Plans held numerous meetings to fashion the timestamp tools including meetings among the Participants and Plan subcommittees, Commission staff, and also involved consultation with industry representatives from the Plan's Advisory Committees. See Response Letter at 2.

²³ See Response Letter at 4.

²⁴ The Commission has considered the proposed Amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78k-1(a)(1).

²⁶ 17 CFR 240.608.

orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. While supporting the timestamp Amendments, the commenter raised three issues regarding the proposal – the need to define the term “matching engine publication timestamp” more clearly, the need for additional timestamps, and a preference that the SIPs determine whether a trade is reported out of sequence and not last sale eligible. The commenter also believes that there is a need to reform SIP governance. The Participants responded to the commenter’s concerns, as discussed above, indicating why they believe that the proposal adequately addresses the issue it was meant to address – providing additional information so that interested persons will be able to measure the latency between the consolidated data feeds and industry proprietary data feeds. The Participants stated that including additional timestamps would delay implementation of the proposal, add costs, and could be confusing. The Participants also indicated that they continue to believe they should decide, consistent with their rules, whether trades are reported out of sequence and not last sale eligible. The Commission agrees with the Participants’ response to the issues raised by the comment letter.

The proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁷ which 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 assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. These goals are furthered by the proposed changes requiring that Participants add timestamps to their trade and quotation reports as this will add transparency regarding the latencies between the Nasdaq/UTP Plan’s consolidated data feeds and industry proprietary feeds. Users of the consolidated feeds will be better able to monitor the latency of those feeds and to assess whether such feeds meet their

²⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

trading and other requirements.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act,²⁸ the rules thereunder, that the proposed Amendment to Nasdaq/UTP Plan (File No. S7-24-89) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Robert W. Errett
Deputy Secretary

²⁸ 15 U.S.C. 78k-1.

²⁹ 17 CFR 200.30-3(a)(27).