

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82440; File No. S7-24-89)

January 3, 2018

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Forty-First 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

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 608 thereunder,² notice is hereby given that on December 14, 2017, the Participants³ in 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”) a proposal to amend the NASDAQ/UTP Plan.⁴ The amendment is the 41st Amendment to the NASDAQ/UTP Plan (“Amendment”).⁵

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ The Participants are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE American LLC; and NYSE National, Inc. (collectively, the “Participants”).

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 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 Letter from Emily Kasparov to Brent J. Fields, Secretary, Commission, dated December 13, 2017 (“Transmittal Letter”).

The Amendment proposes to modify the text of the fee schedule of the Plan to adopt a “Multiple Instance, Single User” (“MISU”) Program that aligns with the MISU Program used by the CTA and CQ Plans. As explained in greater detail below, the Participants state that the Amendment moves towards harmonizing the fees under the Plan with the fees under the CTA and CQ Plan, thereby reducing the administrative burden on subscriber firms. Currently, the Plan has in place a net reporting option for the professional subscriber fee, known as the “Net Reporting Program.”⁶ The Net Reporting Program allows a firm to report only a single device in cases where the firm provides market data to an employee on multiple internally-controlled, fee-liable devices. The Net Reporting Program, however, is only available for internal devices with respect to which the firm controls access to market data and not for external devices for which a vendor (and not the firm) controls access to market data. The proposed adoption of the MISU Program would eliminate this restriction and allow firms to provide a net reporting option that includes both internal devices with respect to which the firm controls access to market data as well as external devices for which another vendor controls access to market data.

According to the Participants, because the adoption of the MISU Program will result in more netting of devices than currently exists under the Net Reporting Program, the Plan expects that the number of devices being reported will decrease. Therefore, to make the adoption of the MISU Program revenue neutral, the Participants are proposing an increase in the professional subscriber device fee from \$22 to \$24, regardless of whether or not a professional subscriber opts for the MISU program. A description of the Plan’s expectations with regards to the decrease in the number of reported devices, and calculations regarding the revenue neutral aspect of the proposed amendment is described in greater detail below.

⁶ See infra note 8 and accompanying text.

Pursuant to Rule 608(b)(3)(i) under Regulation NMS,⁷ the Participants designate the Amendment as establishing or changing a fee or other charge collected on behalf of the Participants in connection with access to, or use of, any facility contemplated by the Nasdaq/UTP Plan and are submitting the amendment for immediate effectiveness.

The Commission is publishing this notice to solicit comments from interested persons on the Amendment. Set forth in Sections I and II is the statement of the purpose and summary of the Amendments, along with the information required by Rules 608(a) and 601(a) under the Act, prepared and submitted by the Participants to the Commission.

I. Rule 608(a)

A. Purpose of the Amendment

1. Background

In April 2013, the Plan adopted the Net Reporting Program for professional subscriber device fees.⁸ If a firm complied with the requirements of the Net Reporting Program, this option permitted the firm to report only a single device in cases where the firm provided market data to an employee on multiple internally-controlled, fee-liable devices. That is, only a single device fee would apply with respect to that firm's provision of market data to that person, even though he or she receives data on multiple devices. At that time, the Net Reporting Program was made available solely for internally-controlled devices with respect to which the firm controlled access to market data and not for external devices for which a vendor (and not the firm) controlled access to market data ("vendor-controlled terminals").

⁷ 17 CFR 242.608(b)(3)(i).

⁸ See Securities Exchange Act Release No. 69361 (Apr. 10, 2013), 78 FR 22588 (Apr. 16, 2013).

The rationale for not including vendor-controlled terminals in the Net Reporting Program was because of the Plan's indirect billing model and the associated administrative burden of including the vendor-controlled terminals in the Net Reporting Program under the indirect billing model. Under the CTA and CQ Plans, Network A and Network B administrators bill end users directly, and as a result, did not face similar administrative burdens for including vendor-controlled terminals. Therefore, the CTA and CQ Plans follow a MISU Program, which allows vendor-controlled terminals to be netted with internally-controlled devices.

The CTA's and CQ's MISU Programs allow subscriber firms to reduce the number of professional subscriber devices being reported for that particular subscriber. As the name suggests, it allows the subscriber firm to be charged a single fee when an employee is accessing market data on multiple devices. A subscriber firm not opting for the MISU Program is required to pay a device fee for each device accessed by an employee. To be included in the CTA's and CQ's MISU Programs, the subscriber firm is required to comply with a number of requirements designed to ensure that the Network A and Network B market data administrator is able to properly account for the multiple devices being used by a single user.

2. Harmonization of CTA/CQ's and UTP's MISU Programs

The Plan is proposing to adopt a MISU Program that allows subscriber firms to report usage in a manner consistent with the CTA and CQ Plans.⁹ Specifically, the Plan's proposed MISU Program would allow subscriber firms to net vendor-controlled terminals with internally-controlled devices.

As an example, consider a subscriber firm that has an employee who accesses market data on two separate internally-controlled devices, as well as two vendor-controlled terminals.

⁹ The Plan would still allow subscriber firms to take advantage of the Net Reporting Program rather than the MISU program if they so choose.

Under the Net Reporting Program, that subscriber firm would report three devices for the employee: the two separate internally-controlled devices would be netted to be counted as one device, and the two vendor-controlled terminals would be separately counted. However, under the proposed MISU Program, the subscriber firm would report a single device for the employee because both vendor-controlled terminals could be netted with the internally-controlled devices.

To take advantage of the MISU Program, subscriber firms must comply with certain requirements that will be set forth in an updated Data Policy document.¹⁰ First, such subscriber firms must submit application documentation, including a sample MISU report to demonstrate their ability to comply with the reporting requirements. Additionally, such subscriber firms must demonstrate internal controls for entitlements, monitoring, and usage reporting requirements. After the application documentation and internal controls are verified, the subscriber firm will receive an approval letter confirming acceptance into the MISU Program. Once accepted to the MISU Program, the subscriber firm will have continuing obligations related to reporting that will ensure the UTP Administrator is able to properly calculate credit under the MISU Program. Such reporting obligations will be detailed in the Data Policy document made available via the UTP Website.

3. Revenue Neutral Implementation of MISU Program

The purpose of this amendment is to harmonize the CQ/CTA Plans and the Plan and reduce administrative burdens for subscriber firms—the purpose of the amendment is not intended to increase or decrease Plan revenue. As a result of the MISU Program, however, subscriber firms will be able to net certain devices such that the total number of devices being reported will decrease. Therefore, to remain revenue neutral, the Plan is proposing an increase in

¹⁰ The Plan's Data Policies can be found on-line at <http://utpplan.com/DOC/Datapolicies.pdf>.

the professional subscriber device fee from \$22 to \$24. As described in more detail below, the Plan has determined, based on past experience, that an increase of the professional subscriber device fee to \$24 will offset revenue losses resulting from a decrease in the number of devices due to increased netting as well as natural price attrition.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of the Amendments

Pursuant to Rule 608(b)(3)(i) under Regulation NMS, the Participants have designated the proposed amendment as establishing or changing fees and are submitting the amendment for immediate effectiveness. However, to effectuate the MISU Program, certain reporting systems will need to be developed to accommodate the reports that subscriber firms are required to file under the MISU Program. Therefore, the MISU Program and associated fee increase will be implemented after development of necessary systems. The Plan will announce the planned implementation date, and expects to be able to proceed with the MISU Program during the first quarter of 2018.

D. Development and Implementation Phases

See Item I.C. above.

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. The proposed adoption of the MISU Program will reduce the administrative burden placed on subscriber firms by harmonizing the approach to netting available under the CQ/CTA Plans and the Plan. The Plan has consulted with subscriber firms who have expressed overwhelming

support for the harmonization detailed herein. As a result, the proposed adoption of the MISU Program would promote consistency in market data administration among the national market system plans and make market data fees easier to administer for subscriber firms.

Additionally, while the adoption of the MISU Program will include a fee increase, such fee increase is necessary to ensure that the adoption of the MISU Program remains revenue neutral. As described below, the Plan has based the fee increase on experience with netting under the CQ/CTA Plans as well as natural price attrition.

F. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance with Plan

See Item I.C. above.

H. Description of Operation of Facility Contemplated by the Proposed Amendments

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

The Participants proposed to increase the professional subscriber device fee from \$22 to \$24 after performing an analysis to adopt a revenue-neutral MISU Program. The adoption of the MISU Program is designed to reduce administrative burdens on subscriber firms by harmonizing the various market data plans. The fee changes are designed to ensure that the MISU Program has a negligible effect on Plan revenue.

In determining the necessary fee increase to achieve revenue neutrality, the Participants reviewed two aspects of the adoption of the MISU Program that would result in decreased revenue: (1) an increase in the netting of devices and (2) natural price attrition.

First, as previously explained, the MISU Program will allow subscriber firms to net internally controlled devices with vendor-controlled terminals. For example, consider a subscriber firm who has an employee who accesses market data on two separate internal devices, as well as two vendor-controlled terminals. Under the current Net Reporting Program, that subscriber firm would report three devices for the employee: the two separate internal devices would be netted to be counted as one device, and the two vendor-controlled terminals would be separately counted. However, under the proposed MISU Program, the subscriber firm would report a single device for the employee because the internally-controlled devices can be netted with both vendor-controlled terminals. Because of this additional netting, the number of devices, and therefore the amount of revenue collected, would decrease. Therefore, to remain revenue neutral, the fee would need to be increased by an amount that is proportional to the projected decrease in the number of professional subscriber devices being reported.

Experience under the CTA Plan has demonstrated that the current MISU Program already in place currently results in a loss of 3.5% of the total number of professional subscriber devices due to netting of multiple terminals.¹¹ However, because the MISU Program will now be available under all three market data plans, the Participants believe that a larger percentage (5%) of netting will occur because it is more likely the benefits of being able to take advantage of the MISU Programs under all three market data plans outweighs the costs of complying with the

¹¹ Due to the reporting requirements under the CTA's MISU Program, it is possible to calculate the amount of netting that currently occurs and the effects of that netting on the total number of professional subscriber devices.

MISU Program. As a result, more subscriber firms will find it economically beneficial to take advantage of the MISU Program.

Second, whenever there is a market data fee price increase, the Plan experiences natural price attrition whereby subscriber firms cancel their subscriptions simply because of the price increases. The Participants analyzed potential attrition based on the actual effect of past price increases for Tapes A and B. Specifically, the Participants looked at attrition rates of 3% and 5% as a result of the proposed professional subscriber device fee increase.

Using these two inputs based on experience (projected netting rates and attrition rates), the Participants determined that an increase of the professional subscriber device fee to \$24 was likely to result in a revenue neutral adoption of the MISU Program. In particular, a natural price attrition rate of 3-5 % and a netting increase of 5% would result in a decrease in revenue of 8-10%. Therefore, the Participants decided to propose the increase of the professional subscriber device fee from \$22 to \$24 (an increase of 9%) as a reasoned approach to ensuring that the adoption of the MISU Program by the Plan would remain revenue neutral.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for which Transaction Reports Shall be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks comment on the Amendment. In particular, the Commission seeks comment on, among other things: (1) whether the effect on revenue would be neutral as represented by the Participants given that there will be an increase in the professional subscriber device fee; and (2) whether the process subscribers must follow and the requirements that subscribers must comply with to take advantage of the MISU Program, are transparent, objective, and subject to fair and non-discriminatory application. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-24-89 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number File No. S7-24-89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the proposed Amendment that are filed with the Commission, and all written communications relating to the proposed Amendment 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the Amendment also will be available for website viewing and printing at the principal office of the Plan. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number S7-24-89 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Brent J. Fields
Secretary