

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82938; File No. S7-24-89)

March 23, 2018

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Forty-Second 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 March 5, 2018, 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 42nd amendment to the NASDAQ/UTP Plan (“Amendment”).⁵ The

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 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 March 1, 2018.

Amendment proposes to amend the text of the fee schedule of the Plan to adopt changes to the Nonprofessional Subscriber Enterprise Cap and Per Query Fees.

The Participants are proposing to increase the Nonprofessional Subscriber Enterprise Cap (“Enterprise Cap”) from \$648,000 to \$1,260,000. The Participants state that the Enterprise Cap was established to provide incentives to entities to make market data available to large Nonprofessional Subscriber bases. Due to what they describe as ongoing industry consolidation, however, the Participants are proposing to increase the Enterprise Cap in order to account for the sudden and substantial increase of Nonprofessional Subscribers at entities using the Enterprise Cap.

To make the increase of the Enterprise Cap revenue neutral (from an overall Plan perspective) and fee neutral (from an individual entity⁶ perspective), the Participants are proposing to decrease the Per Query Fees for those broker-dealers with 500,000 or more Nonprofessional Subscribers. According to the Participants, the increase in fees as a result of the increase of the Enterprise Cap will be offset by a decrease in Per Query Fees for those entities that would most likely be affected by the raising of the cap, i.e., those with a large Nonprofessional Subscriber base.

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. As a result, the Amendment is effective upon filing with the Commission.

⁶ As described below, the Plan does not require an entity that is registered as a broker-dealer under the Act to pay more than the Enterprise Cap for any month for each entitlement system offering UTP Level 1 Service to Nonprofessional Subscribers.

⁷ 17 CFR 242.608(b)(3)(i).

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 Amendment, 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

Nonprofessional Subscriber Enterprise Cap

The Plan requires an entity that is registered as a broker-dealer under the Act to pay no more than the Enterprise Cap for any month for each entitlement system offering UTP Level 1 Service to Nonprofessional Subscribers. The Enterprise Cap equals the aggregate amount of fees payable for distribution of UTP Level 1 Service to Nonprofessional Subscribers that are brokerage account customers of the broker-dealer. The Participants adopted the Enterprise Cap in 2010 and set it at \$600,000 per month. In 2014, the Participants increased the amount of the Enterprise Cap to \$624,000.⁸

In the 2014 Filing, the Participants changed the mechanism for increasing the Enterprise Cap. The Enterprise Cap was previously increased based on the percentage increase in the annual composite share volume for the preceding calendar year, subject to an annual maximum increase of five percent. In 2014, the Participants permitted such annual increases in the monthly Enterprise Cap as to which they agreed by a majority vote, subject to a maximum increase in any calendar year of four percent. At that time, the Participants believed that this provision permitted an annual increase by a two-thirds vote of the Participants without requiring a corresponding rule

⁸ See Securities Exchange Act Release No. 70953 (Nov. 27, 2013), 78 FR 72932 (Dec. 4, 2013) (effective Jan. 1, 2014) (“2014 Filing”).

filing with the Securities and Exchange Commission. Nevertheless, the Participants have not increased the Enterprise Cap since this change was adopted in 2014.⁹ This filing proposes to remove that provision.

Per Query Fee

As an alternative to monthly Professional Subscriber and Nonprofessional Subscriber fees, a vendor may respond to end-user queries for quote and trade information and pay a fee for each such response. The Participants first established Per Query Fees in 1992 as a pilot at \$0.015 per query.¹⁰ In 1995, it was noted that the UTP Per Query Fees were three times that of the Network A and Network B counterparts. Subsequently, the UTP Per Query Fees was [sic] made a permanent part of the fee schedule and was lowered to \$0.01 per query to be more in line with Networks A and B. In April 1999, a pilot at a reduced rate of \$.005 per query was filed and in April 2001, it was approved as the permanent fee structure. In 2014, the Participants increased the fee to \$0.0075 per query to offset the revenue loss resulting from decreases in the Professional Subscriber device fee.

2. Amendment to Enterprise Cap

The Participants are proposing to increase the Enterprise Cap from \$624,000 to \$1,260,000. As a result of industry consolidation, the Nonprofessional Subscriber base for entities subject to the cap may suddenly increase, and where before two entities may have slightly benefited from the Enterprise Cap, a combined entity could find a substantial decrease in fees by using the Enterprise Cap. Consequently, the increase of the Enterprise Cap is designed to

⁹ As described below, the Participants believe that this provision should be deleted and that any changes to the Enterprise Cap should be submitted to the Commission for review and public comment.

¹⁰ See Securities Exchange Act Release No. 73279 (Oct. 1, 2014), 79 FR 60522 (Oct. 7, 2014) (describing the history of the Per Query Fees).

maintain the status quo and should not, in conjunction with the Per Query fee change described below, result in an increase of revenue to the Plan or fees for any particular entity.¹¹

Additionally, the Participants are proposing to remove a provision related to an annual increase of the Enterprise Cap after a two-thirds vote of the Participants. In the 2014 Filing, the Participants amended the mechanism by which the Enterprise Cap would increase, from an automatic increase based on volume to an affirmative vote requirement by the Participants. Since 2014, the Enterprise Cap has not been increased using this mechanism, and the Participants believe that any future changes to the Enterprise Cap should be submitted via a filing with the Securities and Exchange Commission and subject to public comment. Consequently, the Participants are proposing to delete this particular provision.

3. Per Query Fee Change to Remain Revenue Neutral

Because of the increase in the Enterprise Cap, there is a small subset of broker-dealers that use the Enterprise Cap that, without a corresponding offset, could face an increase in fees. To offset this potential fee increase, the Participants are proposing a decrease in the Per Query fee for Nonprofessional Subscribers where a broker-dealer has 500,000 or more Nonprofessional Subscribers. For such entities, the Per Query fee for Non-Professional Subscribers would be decreased from \$.0075 to \$.0025; the Per Query fee for Professional Subscribers would remain at the \$.0075 rate. By implementing a tiered structure for Per Query fees, the proposal is designed to provide an offset to those firms most likely affected by the Enterprise Cap increase (i.e., those with a large Nonprofessional Subscriber base).

Additionally, the proposal will align Network C with a similar tiered structure being proposed for Network A and Network B.

¹¹ The Participants note that a very small number of entities take advantage of the Enterprise Cap.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of the Amendment

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.

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 increase in the Enterprise Cap is designed to account for industry consolidation. Without this adjustment, the Plan's revenue will suddenly decrease due to a broker-dealer increasing its Nonprofessional Subscriber base through a merger with another broker-dealer. As detailed further below, while the Enterprise Cap is being increased, the Plan's revenue and fees collected from entities will be maintained at their current levels. The potential fee increase for broker-dealers taking advantage of the Enterprise Cap will be offset by a decrease in the Per Query fee for broker-dealers with large Nonprofessional Subscriber bases. This offset will ensure that the fee changes proposed herein remain revenue neutral.

The Participants therefore believe that the proposed fee changes are carefully calibrated to maintain the status quo and, as a result, do not impose any burden on competition that is not necessary or appropriate.

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

Not applicable.

G. Approval by Sponsors in Accordance with Plan

In accordance with Section IV(C)(2) of the Plan, more than two-thirds of the Participants have approved the fee change proposed herein.

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

Not applicable.

I. Terms and Conditions of Access

Not applicable.

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

The Participants are proposing to increase the Enterprise Cap by an amount to ensure that industry consolidation would not result in a sudden decrease in Plan revenue, thereby avoiding any single entity from getting a disproportionate benefit from the Enterprise Cap. The Participants propose to decrease the Per Query fee for Nonprofessional Subscribers for broker-dealers with a large Nonprofessional Subscriber base. The amount of the proposed decrease is specifically tailored to ensure that the increase in fees as a result of raising the Enterprise Cap would be offset and that the proposed amendment would remain revenue neutral.

Because the Participants have data showing the current benefit of the Enterprise Cap and the number of queries of those potentially affected by the change in the Enterprise Cap, the Participants were able to calibrate the Per Query fee in order to make the changes proposed herein revenue neutral. As previously stated, the proposed change will not only maintain the status quo on an overall Plan revenue basis, but also maintain the status quo with respect to the fees charged to individual entities.

The proposed fee changes were distributed to and discussed with members of the Plan's Advisory Committee, and were discussed and voted on during the General Session of the Operating Committee in the presence of the Advisory Committee.

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 Amendments. In particular, the Commission seeks comment on the following: 1) is the anticipated impact on revenue to the Plans consistent with the Participants' representations; 2) is the anticipated impact on costs to consumers of market data, including broker-dealers and their non-professional customers, consistent with the Participants' representations; 3) is there supporting data to illustrate that the proposed changes are "revenue neutral" as asserted by the Participants; 4) could the fee changes have a disproportionate impact on particular data recipients; 5) what, if any, supporting data could inform whether the changes would maintain the status quo and therefore do not impose any burden on competition that is not necessary or appropriate as asserted by the Participants; and 6) whether the impact of potential industry consolidation on the revenue of the Plans is consistent with the representations of the Participants? 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