



UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of BLOOMBERG L.P.

For Review of Action Taken by the Participants in
the NASDAQ/Unlisted Trading Privileges Plan, in
the role of a registered Securities Information
Processor.

Admin. Proc. File No. 3-18315

APPLICATION FOR AN ORDER SETTING ASIDE
AMENDMENTS OF THE NASDAQ/UNLISTED TRADING PRIVILEGES PLAN
LIMITING ACCESS TO ITS SERVICES

Bloomberg L.P. (“BLP”) submits this application, pursuant to Section 11A of the Securities Exchange Act of 1934 (the “Act”), or alternatively, to the extent those provisions are determined to be inapplicable, pursuant to Commission Rule 608(d) or Section 19 of the Act, for an order setting aside an amendment unilaterally issued by the Unlisted Trading Privileges Basis (“NASDAQ/UTP Plan” or “Plan”) in its role as a registered securities information processor (“SIP”). The amendment limits the access of BLP and its customers to market data made available by the NASDAQ/UTP Plan and is inconsistent with the Act.

1. BLP provides real time market data, analytics, and news to more than 325,000 subscribers globally. Market data is important to the business of BLP and its customers. BLP and its customers regularly seek access to the market data that the NASDAQ/UTP Plan makes available.

2. The NASDAQ/UTP Plan has provided notice that it filed an amendment to its fee schedule, which purports to make derived data fee liable under the regular NASDAQ/UTP Plan fee schedule in its role as a registered SIP. *See* SEC Release No. 34-82072; File No. S7-24-89 (Nov. 14, 2017). The amendment became effective upon filing with the Commission, and the Commission has not yet suspended the amendments or instituted proceedings to disapprove them.

3. Section 11A of the Act provides aggrieved persons with the right to seek Commission review of SIP actions limiting access to its services. 15 U.S.C. § 78k-1(b)(5). If the Commission, upon notice and application by an aggrieved person or on its own motion, reviews the limitation of services and does not find that it is consistent with the provisions of the Act, or the rules and regulations thereunder, or finds that the limitation discriminates unfairly or imposes an inappropriate or unnecessary burden on competition, the Commission shall set aside the limitation on services. *Id. See also* 17 C.F.R. § 242.608 (providing requirements for and review

of amendments to national market system plans).

4. The Commission should review and set aside the amendment because it constitutes an improper limitation on access to the NASDAQ/UTP Plan's services under Section 11A(b) and (c). The amended fee schedule limits access to critical and exclusive market data for persons unwilling or unable to pay the NASDAQ/UTP Plan's fees. Furthermore, the Commission should set aside the amendment because BLP and its customers must pay fees that are not consistent with the Act. The amendment is not "fair and reasonable," 15 U.S.C. § 78k-1(c)(1)(C), does not "assure that all . . . persons may obtain [market data] on terms which are not unreasonably discriminatory," *id.* § 78k-1(c)(D), and does not "provide for the equitable allocation of reasonable . . . fees . . . among . . . persons using [the SIPs'] facilities," *id.* § 78f(b)(4). Nor does it "promote just and equitable principles of trade" or "protect investors and the public interest." *Id.* § 78f(b)(4). The amendment thus unfairly discriminates against BLP and its customers, and imposes a "burden on competition" that is not necessary or appropriate in furtherance of the purposes of the Act. *Id.* § 78f(b)(5)(B). Finally, the amendment does not comply with the substantive and procedural requirements for plan amendments contained in Commission Rule 608. 17 C.F.R. § 242.608. In sum, the amendment is unlawful and unenforceable under Section 11A(b)(5).

5. For the foregoing reasons, BLP respectfully requests that the Commission set aside the fee amendment.

Dated: December 13, 2017

Respectfully submitted,

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Rule of Practice 420(c) Statement: Service upon the applicant may be accomplished by serving their attorneys at the address listed above.

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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2017, I caused a copy of the foregoing Application for an Order Setting Aside Amendments of the NASDAQ/Unlisted Trading Privileges Plan in its role as a registered Securities Information Processors Limiting Access To Their Services to be served on the parties listed below by First Class Mail.

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Dated: December 13, 2017



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