

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88017; File No. S7-24-89)

January 23, 2020

Joint Industry Plan; Notice of Filing of the Forty-Fifth 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 September 11, 2019,³ the Participants⁴ 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.⁵ The amendment represents the 45th amendment to the Nasdaq/UTP Plan (“Amendment”). Under the

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ See Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission, dated September 6, 2019.

⁴ The Participants are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; NYSE Chicago, Inc.; Financial Industry Regulatory Authority, Inc.; The Investors’ Exchange LLC; Long-Term Stock Exchange, Inc.; 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.; and NYSE National, Inc. (collectively, the “Participants”).

⁵ 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).

Amendment, the Participants propose to amend the Plan to resolve textual inconsistencies in Plan provisions governing the reporting of last sale price reports in an Eligible Security⁶ by the Processor⁷ during a Regulatory Halt.⁸

The proposed Amendment has been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.⁹ The Commission is publishing this notice to solicit comments from interested persons on the proposed 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

Section X of the Plan currently includes inconsistent language with respect to the Processor's ability to disseminate last sale price reports in an Eligible Security during a Regulatory Halt. Section X.A prohibits the Processor from including any last sale reports in an Eligible Security during a Regulatory Halt. Section X.C, however, includes language that

⁶ Section III.B of the Plan defines "Eligible Security" as "any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASDAQ Rule 4200. Eligible Securities under the UTP Plan does not include any security that is defined as an "Eligible Security" within Section VII of the Consolidated Tape Association Plan."

⁷ Section III.Q of the Plan defines the term "Processor" as "the entity selected by the Participants to perform the processing functions set forth in the Plan."

⁸ Section III.S of the Plan defines the term "Regulatory Halt" as a "trade suspension or halt called for the purpose of dissemination of material news, as described in Section X of the Plan or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue, including a trading halt for extraordinary market activity due to system misuse or malfunction under Section X.E. 1 of the Plan ('Extraordinary Market Regulatory Halt')."

⁹ 17 CFR 242.608(b)(2).

specifically permits the Processor during a Regulatory Halt to “collect and disseminate Transaction Information.”

In practice, during a Regulatory Halt, the Processor has been following Section X.C and will immediately disseminate last sale price reports during a Regulatory Halt. The Participants believe that the Processor’s current practice helps to reduce inefficiencies and confusion among market participants with respect to the operation of the Plan during a Regulatory Halt. As a result, the Participants have determined it appropriate to amend the language of the Plan to resolve the inconsistent language described above in order to confirm that the Processor may continue to disseminate last sale price reports during a Regulatory Halt. In addition, the Amendment would also align the Plan language with a corresponding Amendment being proposed by the CTA Plan.

Further, the Participants believe that the Amendment would help avoid race conditions. By way of example, when a primary market initiates a Regulatory Halt, it sends notifications to the Processor and other Participants. A trade may occur at a Participant before that Participant receives notification of the Regulatory Halt and thereby reports the trade to the Processor after the Processor receives notification of the Regulatory Halt. The Participants believe it would be impractical for the Processor to determine that a transaction occurred either before or after a Participant received notification of a Regulatory Halt, and therefore whether to immediately disseminate or refrain from disseminating the trade report until permissible. Consequently, the Participants believe that it is appropriate to place the responsibility on the individual Participants to determine whether or not a transaction should be printed during a Regulatory Halt, and the Processor should simply act as a pass-through for the information that it receives from the Participants. Therefore, the Amendment will permit the Processor to continue to disseminate any

last sale price reports received during a Regulatory Halt, without reference to the specific race condition identified above.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

Each of the Participants has approved the Amendment in accordance with Section IV.C of the UTP Plan. The Participants also received feedback from the Advisory Committee on amending the Plan to resolve ambiguous language in the Plan to confirm that the Processor may disseminate last sale price reports and align the Plan with the corresponding Amendment proposed by the CTA Plan.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The Participants believe that the proposed Amendment 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, as amended. The Participants believe that amending the Plan to resolve inconsistent language with respect to dissemination of information by the Processor during Regulatory Halts reduces inefficiencies and confusion among market participants with respect to the operation of the Plan during a Regulatory Halt. Additionally, the Participants believe that the Amendment will serve to increase transparency in the marketplace by disseminating Transaction Reports closer in time to when such transactions actually occurred. The Participants also have approved a corresponding Amendment to the CTA Plan thereby aligning the operation of the Plan with the CTA Plan.

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

Not applicable.

G. Approval by Sponsors in Accordance with Plan

Section IV.C.1 of the UTP Plan requires the Participants to unanimously approve the Amendment proposed herein. They so approved it.

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

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Regulation NMS Rule 601(a) (solely in its application to the amendments to the UTP Plan)

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

The Amendment would resolve ambiguous Plan language to clarify that the Processor may continue to disseminate Transaction Reports of last sale prices for transactions received by the Processor during a Regulatory Halt.

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 general comments on the Amendment. 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 Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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.

Jill M. Peterson
Assistant Secretary