SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69361; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 28 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.

April 10, 2013.

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 27, 2013, the operating committee (''Operating Committee'' or ''Committee'')[3] 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 Privilege Basis (''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan.[4] This amendment represents Amendment No. 28 (''Amendment'') to the Plan and proposes to increase the interrogation device fee, to establish a redistribution fee and to establish a ''net reporting'' option. Pursuant to Rule 608(b)(3)(i) under the Act, the Participants designated the Amendment as establishing or changing a fee or other charge collected on behalf of all of the Participants in connection with access to, or use of, the facilities contemplated by the Amendment. As a result, the Amendment has been put into effect upon filing with the Commission. At any time within 60 days of the filing of the Amendment, the Commission may summarily abrogate the Amendment and require that the Amendment be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons.

I. Rule 608(a)

A. Purpose of the Amendments

The Amendment proposes to increase the interrogation device fee, to establish a redistribution fee and to establish a ''net reporting'' option.

1. Interrogation Device Fee

The charge for each interrogation device receiving UTP Level 1 Service is currently $20.00 per month. The Participants propose to increase this to $25.00 per month. For that fee, the data recipient will continue to receive inside bid/ask quotations calculated for Nasdaq-listed securities, last sale information on Nasdaq-listed securities, and FINRA OTC Data (collectively, the ''UTP Level 1 Service Market Data''), as it does today.

The $20 interrogation device fee has remained in place since 1997. Thus, the increase amounts to less than a two percent increase per year over a 16 year period. During that period, the amount of market data and the categories of information distributed through the UTP Level 1 Service have grown dramatically. The Processor under the Plan has made hundreds of modifications to the UTP Trade Data Feed and the UTP Quotation Data Feed (''UQDF'') over the past fifteen years to keep up with changes in market structure, regulatory requirements and trading needs. These modifications have added such things as new messages, new fields, and new values within designated fields to the UTP Level 1 Service. They have caused the UTP Level 1 Service to support such industry developments as Regulation NMS, decimalization, limit up/limit down, and many other changes. The growth in prices and quotes distributed over the UTP Level 1 Service has also been dramatic. For instance, from February 2005 to February 2013, the UTP UQDF 5-second peak message rate has increased by a multiple of 15 from 3,789 messages per second to 57,685 messages per second. Over that period, the daily peak rate has increased more than 3-fold to 136,500,547 messages.

In addition, the increase places the level of the fee on a level more commensurate with device charges under other national market system plans. For instance, the Network A Participants under the CTA and CQ Plans recently revised their device fees to establish a four-tier structure, with monthly fees ranging from $50 to $20, depending on the number of devices that a data recipient reports.[5] The Network B Participants under the CTA and CQ Plans recently revised their monthly device fee to $24 per device.[6] Under the OPRA Plan, the device fee is currently $26 per month, and will rise to $27 per month on January 1, 2014.

The Participants note that the number of devices reported under the Nasdaq/UTP Plan has declined significantly in recent years, which has led to a decline in revenues generated under the Plans. (The *Consolidated Data Quarterly Operating Metric Reports* show that the Nasdaq/UTP Plan device population has decreased approximately 10 percent from the fourth quarter of 2010 to the fourth quarter of 2012. Those reports can be found at *http://www.utpplan.com.*)

As described below, the revenue increases that the higher device fee would generate are mitigated in part by the ''net reporting'' option that the Participants are proposing to establish.

2. Redistribution Charge

The Participants propose to establish a new monthly charge of $1,000 for the redistribution of the UTP Level 1 Service Market Data. This will not necessitate any additional reporting obligations. The redistribution charges

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The Plan Participants (collectively, ''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.; 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.

[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* Securities Exchange Act Release No. 69157 (March 18, 2013), 78 FR 17946 (March 25, 2013) (SR–CTA/CQ–2013–01) (''CTA Release'').

[6] *Id.*

would apply to any entity that makes last sale information or quotation information available to any other entity or to any person other than its own employees, irrespective of the means of transmission or access. That is, all firms that redistribute any of the UTP Level 1 Service Market Data outside of their organization would be required to pay the redistribution fee. The fee would not apply to a firm whose receipt, use and distribution of market data is limited to its own employees in a controlled environment.

The proposed redistribution charge better harmonizes fees under the Nasdaq/UTP Plan with fees under the CTA, CQ and OPRA Plans. In the CTA Release, the CTA and CQ Plan Participants adopted redistribution charges of $1000 for the redistribution of Network A data and $1000 for the distribution of Network B data. The OPRA Plan imposes a redistribution charge of $1500 per month on every vendor that redistributes OPRA data to any person (or $650 for an internet-only service). Redistribution fees are also common for exchange proprietary data products.

The Participants note that vendors base their business models on procuring data from exchanges and turning around and redistributing that data to their subscribers. The costs that market data vendors incur for acquiring their inventory (*e.g.,* UTP Level 1 Service Market Data) is very low, sometimes amounting only to their payment of access fees. The proposed redistribution charges would require them to contribute somewhat more, relative to the end-user community.

3. Net Reporting Program

The Participants propose to adopt a net reporting option for the professional subscriber interrogation device charge (the ''Net Reporting Program''). If a firm complies with the requirements for the Net Reporting Program, this option permits the firm to report only a single interrogation device in cases where the firm provides market data to an employee on multiple internally-controlled, fee-liable interrogation devices. That is, only a single interrogation device fee would apply in respect of that firm's provision of market data to that person, even though he or she receives data on multiple devices. The Participants propose to make the Net Reporting Program available solely for internal interrogation devices in respect of which the firm controls access to market data and not for external interrogation devices or internal interrogation devices for which a vendor (and not the firm) controls access to market data.

This program better harmonizes the Nasdaq/UTP Plan with the CTA and CQ Plans. Those Plans offer the ''Multiple Instance, Single User'' (''MISU'') program. MISU is similar to the Net Reporting Program except in one key respect. Vendors under the Nasdaq/UTP Plan bill their customers on behalf of the Plan Participants. Under the CTA and CQ Plans, the Network A and Network B administrators bill end users directly. Due to the Nasdaq/UTP Plan's indirect billing model, the Participants propose to make the Net Reporting Program available solely to internal interrogation devices. That is, the program will only be available for devices that its employees use and in respect of which the firm controls access to market data.

The Participants will make the Net Reporting Program available only to firms that meet the program's requirements and that Nasdaq, the Nasdaq/UTP Plan's administrator, has approved to participate in advance. To qualify, a firm must demonstrate to Nasdaq that it has adequate internal controls for entitling and monitoring its employees' data usage and for reporting that usage to Nasdaq.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

All of the Participants have manifested their approval of the proposed Amendment by means of their execution of the Amendment. The Participants propose to implement the rate changes as of April 1, 2013. They have already given notice to data recipients of their intention to make the changes effective as of that date.

The Participants understand that April 1, 2013, is the date on which the fee changes that the CTA and CQ Plan Participants set forth in the CTA Release will become effective. The Participants seek to harmonize the timing of the changes set forth in Amendment No. 28 with those of the CTA and CQ Plan Participants.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The proposed Amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. They will cause the fee structure under the Nasdaq/UTP Plan to more closely resemble the fee structures under the CTA, CQ and OPRA Plans.

The Participants cannot say with certainty the impact of the Net Reporting Program. Based on feedback from the firms most likely to take advantage of the program, they estimate that the program will result in approximately a 15 percent reduction in reported devices. With this reduction in reported devices in mind, they estimate that the increase in the interrogation device fee will increase Nasdaq/UTP revenues by approximately $420,000 per month and that the redistribution fee will increase revenues by approximately $235,000 per month. These estimates do not take into account an anticipated continuation of the decline in the number of reported professional subscriber interrogation devices, including a decline due to the attrition that may result from the increased interrogation device rate and the new redistribution fee.

The increase in the interrogation device fee would fall upon broker-dealer firms and other consumers of UTP Level 1 Service. Some of those firms will benefit from the Net Reporting Program. All of those firms have benefitted from 16 years without a price increase.

The new redistribution fee would fall upon market data redistributors, many of whom currently contribute little or nothing to the operation of the securities markets in exchange for their inventory (*i.e.,* the market data they redistribute to their customers).

In the Participants' view, the proposed fee changes would allow data redistributors and data users to contribute an appropriate amount for their receipt and use of market data under the Nasdaq/UTP Plan. They would provide for an equitable allocation of dues, fees, and other charges among broker-dealers, vendors, end users and others receiving and using market data made available under the Nasdaq/UTP Plan.

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

The Participants have no written understandings or agreements relating to interpretation of the Plan as a result of the Amendment.

G. Approval by Sponsors in Accordance With Plan

Each of the Plan's Participants has approved the changes and has executed a written amendment to the Plan.

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

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

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

The Participants took a number of factors into account in arriving at the proposed fee changes. The proposed changes promote consistency in price structures among the national market system plans, as well as consistency with the preponderance of other market data providers. This would make market data fees easier to administer. It would enable data recipients to compare their charges under the respective national market system plans more easily. It also would make for a more straightforward and streamlined administrative process for both the network administrator and market data users.

In addition, the Net Reporting Program responds to suggestions of members of the industry that the program would provide for an equitable allocation of dues, fees, and other charges among vendors, who redistribute the Plan's market data, and the firms that consume the data. Similarly, the Participants believe that the redistribution fee would equitably allocate fees to redistributors, many of whom currently pay little in the way of market data fees. The increase in the interrogation device fee follows 16 years of no change in the rate and sets the fee at a level that is commensurate with its counterparts under the other national market system plans.

The Participants would apply the interrogation device fee, the redistribution fee and the Net Reporting Program uniformly to all firms qualifying for the Program (including members of the Participant markets and non-members) and do not believe that any of the proposed changes introduce terms that are unreasonably discriminatory.

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

The Net Reporting Program will require a program participant to report on a monthly basis, just as it does today. The only difference is that the firm would be able to report only a single interrogation device in cases where the firm provides market data to an employee on multiple internally-controlled, fee-liable interrogation devices.

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 general comments on Amendment No. 28. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 email to *rule-comments@sec.gov.* Please include File Number S7–24–89 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, 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 email 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan 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 Web site 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 filing also will be available for Web site viewing and printing at the Office of the Secretary of the Committee, currently located at the CBOE, 400 S. LaSalle Street, Chicago, IL 60605. All comments received will be posted without change; the Commission does not edit personal identifying information from 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 May 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 18, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

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[7] 17 CFR 200.30–3(a)(27).