impact on overall market quality by incentivizing members to add and remove liquidity from the Exchange in meaningful amounts. If, however, the Exchange is incorrect and the changes proposed herein are unattractive to members, it is likely that Nasdaq will lose market share as a result.

Accordingly, Nasdaq does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 SR–NASDAQ–2017–120 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 SR–NASDAQ–2017–120. 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 Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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, 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 inspection and copying at the principal office of the Exchange. 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 SR–NASDAQ–2017–120, and should be submitted on or before December 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–25037 Filed 11–17–17; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82071; File No. SR–CTA/CQ–2017–04]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Twenty-Second Charges Amendment to the Second Restatement of the CTA Plan and the Thirteenth Charges Amendment to the Restated CQ Plan

November 14, 2017.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on October 19, 2017, the Consolidated Tape Association (''CTA'') Plan participants (''Participants'')[3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan and the Restated CQ Plan (''Plans''). The amendment represents the twenty-second Charges Amendment to the CTA Plan and the thirteenth Charges Amendment to the CQ Plan (''Amendments''). The Amendments seek to amend the Plans' fee schedule as well as the Non-Display Use Policy to clarify the applicability of the non-display fee, the device fee, and the access fee. The Participants believe that some vendors are mischaracterizing their customers' usage and creating artificial loopholes to avoid the Non-Display Use and access fees pursuant to amendments filed in October 2014 (''2014 Fee Amendments'')[4] in an attempt to obtain an advantage over other vendors. The Participants believe that the distinction between the device fees, the Non-Display Use fees, and the access fee was set forth in the 2014 Fee Amendments, and many vendors are fully complying with that distinction. The Participants state that some vendors appear to be ignoring the import of the 2014 Fee Amendments in order to gain an advantage over other vendors, allowing them to profit from new or existing customers by offering them lower fees than such customers could obtain from vendors who apply the 2014 Fee Amendments correctly. The Participants state that the proposed amendment is designed to close this loophole by removing any perceived ambiguity in the 2014 Fee Amendments.[5]

The Participants previously submitted an amendment to clarify the application of the Non-Display Use Policy.[6] That amendment elicited comment letters, some opposing and some supporting the amendment.[7] The Participants believed

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The Participants are: Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; Chicago Board Options Exchange, Incorporated; 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; NYSE National, Inc.

[4] *See* Securities Exchange Act Release No. 73278 (October 1, 2014), 79 FR 60536 (October 7, 2014) (''2014 Fee Amendments'').

[5] The Participants would apply this proposed amendment prospectively to meet any concerns that the existing policy was insufficiently clear.

[6] *See* Securities Exchange Act Release No. 80300 (Mar. 23, 2017), 82 FR 15404 (Mar. 28, 2017).

[7] *See* Letter from David Craig, President, Thomson Reuters, dated April 21, 2017 (''Thomson Reuters Letter''); Letter from Anonymous, dated

that the opposing comments either misunderstood or misconstrued the purpose and application of that amendment. In order to provide additional explanation of the reasons behind and the impact of the clarification of the Non-Display Policy, the Participants withdrew that amendment and are now submitting this amendment in its place.

In order to correct misinformation regarding the applicability of the Non-Display Use and access fees, the Participants believe that it is important to clarify that Non-Professional Users [8] are not subject to Non-Display Use, access, or device fees, regardless of the type of data product they receive. Rather, as provided for on the Fee Schedules, the only charge applicable to Non-Professional Users is the $1.00 monthly charge and this charge is applicable to any use of the data by a Non-Professional User. While a vendor may make available to a Non-Professional User a data product that could result in Non-Display Use or access fees being assessed against a Professional Subscriber, if the subscriber is a Non-Professional User, that Non-Professional User still would only be subject to the $1.00 monthly charge for such use.[9] Therefore, the Participants believe this proposed amendment will have no effect on the fees paid by Non-Professional Users.

Pursuant to Rule 608(b)(3) under Regulation NMS,[10] the Participants designate the amendment as establishing or changing a fee or other charge collected on their behalf in connection with access to, or use of, the facilities contemplated by the Plans. As a result, the amendment becomes effective upon filing with the Commission.

The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments. 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 Amendments

1. Background

The 2014 Fee Amendments

The Participants amended the Plans' fee schedules in October 2014 to establish fees for Non-Display Uses of data and reduce the device fees assessed on Professional Subscribers.[11] The 2014 Fee Amendments responded to long-term changes in data-usage trends. In formulating the 2014 Fee Amendments, the Participants studied the optimum allocation of fees among market data users and consulted with industry representatives that sit on the Plans' Advisory Committee and with other industry participants.

The 2014 Fee Amendments realigned the Plans' fees more closely with the ways in which data recipients consume market data. To reflect the changes in consumption of market data, the Participants reduced the rates that Professional Subscribers paid for each of their display devices while establishing fees for non-display consumption of data, referred to as Non-Display Use.

For example, among other fee reductions, the Professional Subscriber fee was reduced for individuals and firms having only one or two devices, with a ten percent decrease in the fees charged to these subscribers. The other tiered device rates for Professional Subscribers also were reduced. The monthly device fees currently range from $19 to $45 for Network A and is $23 for Network B. Additionally, in the 2014 Fee Amendments, the Participants retained the monthly $1.00 Non-Professional User fee as a cost-effective rate for retail investors.

The 2014 Fee Amendments created Non-Display Use fees in recognition of the increasingly large amounts of data being made available and the significant value vendors and their subscribers could derive from using data received in a non-display manner. Non-Display Use was defined in the 2014 Fee Amendments as any use accessing, processing, or consuming real-time Network A or Network B quotation information or last sale price information for a purpose other than in support of a data recipient's display or further internal or external redistribution.

The 2014 Fee Amendments provided a non-exhaustive list of examples of Non-Display Use,[12] including:

- Trading in any asset class;
- Automated order or quote generation and/or order pegging;
- Price referencing for algorithmic trading;
- Price referencing for smart order routing;
- Operations control programs;
- Investment analysis;
- Order verification;
- Surveillance programs;
- Risk management;
- Compliance; and
- Portfolio Valuation.

The Participants established three categories of Non-Display Use of market data:

- Category 1 applies when a data recipient makes Non-Display Use of real-time market data on its own behalf.
- Category 2 applies when a data recipient makes Non-Display Use of real-time market data on behalf of its customers.
- Category 3 applies when a data recipient makes non-display uses of real-time market data for the purpose of internally matching buy and sell orders within an organization.

The Non-Display Use Fee is $2,000 per category for Network A and $1,000 per category for Network B. Data recipients can be charged for each of the three categories of Non-Display Use they utilize. Importantly though, if a data recipient makes Non-Display Use of real-time market data on behalf of its customers (a Category 2 use), its customers are not charged the Category 2 Non-Display Use fee or the access fee. Instead, the data recipient (who in this example could be a broker-dealer using

April 20, 2017; Letter from Jay Froscheiser, VP, DTN/Schneider Electric, dated April 19, 2017; Letter from Melissa MacGregor, Managing Director and Associated General Counsel, SIFMA, dated April 18, 2017 (''SIFMA Letter''); Letter from Greg Babyak, Head of Global Regulatory and Policy Group, Bloomberg, dated April 18, 2017 (''Bloomberg Letter''); Letter from Brad Ward, dated April 17, 2017; Letter from Marcus Mitchell, dated April 17, 2017.

[8] As defined in Exhibit B to the Agreement for Market Data Display Services, a Non-Professional User is ''any natural person who receives market data solely for his/her personal, non-business use and who is not a 'Securities Professional,' '' meaning that the person is not (1) registered or qualified with the SEC, the CFTC, any state securities agency, any securities exchange/association, or any commodities/futures contract market/association, (2) engaged in the functions of an investment advisor as those are described in Section 202(a)(11) of the Investment Advisers Act of 1940, or (3) employed by a bank or other organization exempt from registration under Federal or state securities laws to perform functions that would require them to be so registered or qualified if they were to perform such functions for an organization not so exempt. The CTA's Non-Professional Subscriber Policy can be found at *https://www.ctaplan.com/policy.*

[9] The Administrator will update its reporting process to ensure that Non-Professional Users would continue to be subject to only the $1.00 monthly charge regardless of use or data delivery method to such customer.

[10] 17 CFR 242.608(b)(3)(i).

[11] *See supra* note 4.

[12] Non-Display Use does not apply to the creation and use of derived data. Derived data is generally understood by the industry to consist of pricing data or other information that is created in whole or in part from consolidated quotation or last sale price information, but which cannot be reverse engineered to recreate such information or be used to create other data that is recognizable as a reasonable substitute for such information. For instance, using consolidated quotation information or last sale price information to value portfolios or create indexes would not be considered Non-Display Use.

the data for smart order-routing) is charged the Category 2 Non-Display Use fee once and is charged the access fee once, but its customers are not charged either fee for the Non-Display Use by the broker-dealer on their behalf. Category 3 is the only Non-Display Use fee that can be charged multiple times; that possibility arises only if a subscriber operates more than a single ATS, exchange, or ECN, and the fee is charged once per ATS, exchange, or ECN.

Access Fees

CTA currently charges an access fee to any subscriber with access to data feeds. This fee is charged based on the receipt of data, rather than how the data is used. If a subscriber is receiving a data feed, *i.e.,* information transmitted in a format that is not controlled or can be manipulated and integrated into their own systems, that subscriber is subject to access fees. Access fees are therefore distinct from the separate charges on the Fee Schedule that are based on how the data is used, including device fees and Non-Display Use fees.

Mischaracterization of Usage by Certain Vendors

Following the 2014 Fee Amendments, the Participants became aware that certain vendors were characterizing the usage of their customers as subject to solely the device fees despite the fact that the vendors were not delivering the data in a controlled format. Rather, the data was being delivered in a format that enabled their customers to integrate the data into their own systems and software for Non-Display Use. The Participants understand that certain vendors use this characterization to offer their customers the ability to avoid the non-display and access charges due under the Plan to the detriment of other vendors who properly characterized how they delivered the data as being subject to access fees and their customers' usage as being subject to the Non-Display Use fees. The Participants believe that this characterization is clearly contrary to the language and purpose of the 2014 Fee Amendments.

It is important, therefore, to understand the different types of data products that can be provided by a vendor, generally falling into two categories.

The first category consists of data distributed in a form that only enables it to be visibly displayed on a device such that the data recipient can only see the consolidated quotation and last sale information without being able to integrate the data into the recipient's own systems and software; the proposed amendment will have no effect on what users of this type of product pay. The device fee contemplates that once that data has been visibly displayed via a graphical user interface, it can be exported via a data delivery exchange to a format such as Excel for further display use. For example, for a Professional Subscriber, use of Bloomberg's Excel add-in features, would be subject to the existing device fee, currently set at a maximum of $45 per unit, and would not be considered Non-Display Use. As described above, this category would not subject a subscriber to any access fees.

The second category consists of data being provided to a subscriber in a format that enables the subscriber to incorporate the data into the data recipient's systems and software. This type of subscriber is essentially doing through a vendor what it could do if the subscriber accessed data directly from CTA: The vendor is functionally acting as a pipe through which the data is delivered to the subscriber. This type of delivery of data is subject to access fees, and, depending upon usage, non-display fees.

The Participants are concerned that certain vendors are providing subscribers with a level of access to market data that allows the subscriber to use the market data for Non-Display purposes, yet those vendors are not reporting that delivery of data as a data feed.[13] The Participants understand that vendors failing to properly report are taking advantage of understandings of use that pre-dated the 2014 Fee Amendments by continuing to report that their customers were subject only to the lower device fees rather than as data feeds applicable to Non-Display Use and access fees that others were paying in accordance with the existing fee schedule. In other words, those vendors are not applying the 2014 Fee Amendments, but rather continuing to report what constitutes a data feed delivery and non-display use as a device use only. This misinterpretation of the 2014 Fee Amendments has not only upset the balance struck by the Participants in the 2014 Fee Amendments between who should be subject to the device fees versus the Non-Display Use fees, it has also upset the competitive balance among vendors. The Participants are filing this proposed amendment in order to definitively remove any ambiguity with regards to the applicability of the Non-Display Use and access fees to eliminate this imbalance.

In connection with the previously submitted amendment regarding Non-Display Use, certain commenters raised concerns about a potential increase in the price of a particular data product being offered in the marketplace, the Bloomberg Server Application Program Interface product (''Bloomberg SAPI''). Bloomberg argued that those using the Bloomberg SAPI should not be subject to the Non-Display Use and access fees because the output of the server-based application is displayed to users whose device or user ID has been entitled by Bloomberg.[14] But Bloomberg's focus solely on how the data might be disseminated by some SAPI users is misplaced and exemplifies the issue that the Participants are attempting to resolve with this proposed amendment.

As described above, the access fee is charged to those data recipients who obtain data in a manner that enables the recipient to integrate that data into their own systems or software, regardless of whether and how the recipient chooses to use that data. And the Non-Display Use fee is applicable whenever data is used in a manner that does not make the data visibly available to a data recipient on a device. This is exactly what Bloomberg concedes the Bloomberg SAPI permits when Bloomberg states that the Bloomberg SAPI allows customers to run server-based applications on market data. For example, when Bloomberg first reported use of the Bloomberg SAPI service to the Network Administrator, Bloomberg represented that ''[s]ubscribers to Bloomberg's API service typically use the application for the following purposes: Pricing engines, portfolio valuations, order management programs, risk compliance engines, and program trading applications.''

Prior to 2014, such use was subject to device fees but only because Non-Display Use fees did not exist. However, consistent with the 2014 Fee Amendments, any such use constitutes Non-Display Use according to the definitions that went into effect in 2014 and should be subject to the Non-Display Use and access fees; the

[13] The CTA Network Administrator requires all customers and vendors that wish to receive market data via an uncontrolled data feed to complete an Exhibit A, available here: *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/Exhibit%20A%20-%20CTA%20-%20Internal%20and%20External%20Distribution.pdf.* Among other information, vendors that redistribute data must report data feeds provided to subscribers. Any subscriber that makes a non-display use of CTA or CQ data must then complete a Non-Display Use of CTA/CQ Market Data—Customer Declaration, which is available here: *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Non%20Display%20Declaration%20Form.pdf.*

[14] *See* Bloomberg Letter at 4–5.

provision of such data via the Bloomberg SAPI does not obviate that fact. Use of encryption or entitlements are not designed to restrict such use because they only control access to the data, not use of the data, and it is the latter that determines whether Non-Display Use and access fees apply.

SIFMA, in its letter commenting on the previous proposed amendment, also focused on the applicability of the Non-Display Use and access fees on Bloomberg's SAPI. But SIFMA mischaracterized the Bloomberg SAPI as ''the quintessential display product.'' [15] While Bloomberg has a display product, *i.e.,* Bloomberg Terminal, the functionality made available by the Bloomberg SAPI is not at its core a display product. The ability to integrate consolidated quotation and last sale information into a data recipient's ''server-based applications'' clearly demonstrates the incongruence between SIFMA's description and the Bloomberg SAPI data product's overall functionality. Customers that choose to subscribe to both the Bloomberg Terminal and the Bloomberg SAPI presumably are doing so because they are using the data for purposes other than just display of the data. Indeed, the Participants understand that is why Bloomberg charges its subscribers substantial amounts for the Bloomberg SAPI over and above the amounts Bloomberg charges for use of one its terminals alone. If in fact a customer only needs the display features, which would include use of Excel add-in features, such a customer would not need the Bloomberg SAPI. The customer could end its use of the Bloomberg SAPI and then would not be subject to Non-Display Use or access fees. For the avoidance of doubt, a hypothetical Bloomberg customer that only used Bloomberg Terminals and not the Bloomberg SAPI would not be affected in any way by the proposed amendment. Bloomberg itself implicitly conceded this: Although it rents out more than 300,000 terminals, it claimed the previous proposed amendment would impact only ''hundreds'' of its customers.[16]

[15] *See* SIFMA Letter at 2.

[16] *Compare* Bloomberg Web site touting 325,000 global terminal subscribers, *https://www.bloomberg.com/company/bloomberg-facts/ with* Bloomberg Letter at 1 (claiming that ''hundreds'' of customers would be affected).

B. Proposed Amendments to Plans' Fee Schedules

1. Amended Definition of Non-Display Use

To distinguish between the two categories of use of data, the Participants are proposing to amend the definition of ''Non-Display Use'' in footnote eight of the Plans' fee schedules to explicitly state that any use of data that does not make data visibly available to a data recipient on a device is a Non-Display Use. The Participants are proposing to make a parallel amendment to footnote two of the Plans' fee schedules to state that the device fee will only be applicable where the data is visibly available to the data recipient; any other data use on a device will be considered Non-Display Use.

In the 2014 Fee Amendments, the Participants recognized the relative values of non-display versus display data usage. With the proliferation of automated and algorithmic trading, non-display uses consume large amounts of data and perform a wide variety of functions. The black boxes and application programming interfaces utilized by these firms process data far more quickly, and as a result, the relative value between non-display and display data usage is pronounced. The disparity in value between non-display and display data usage led the Participants to decrease the Professional Subscriber device charges in the October 2014 Non-Display Filing while establishing the Non-Display Use fees. However, if a vendor distributes data for Non-Display Use but reports that its subscribers are subject only to device fees, such interpretation would disrupt the balance struck by the Participants in lowering the device fees while establishing the Non-Display Use fees.

The Participants believe that amending the fee schedule will create a clear understanding of when the Non-Display Use fee is applicable. The Participants believe that the proposed amendment is consistent with the 2014 Fee Amendments and therefore would clarify the change made by the 2014 Fee Amendments.

To notify data recipients of the amended definition, the Participants will be updating the CTA Market Data Non-Display Use Policy. The CTA Market Data Non-Display Use Policy describes the applicability of the Non-Display Use fee to specific uses of real-time Network A and Network B last sale information and quotation information. The CTA Market Data Non-Display Use Policy currently reflects the applicability of the Non-Display Use fee as established by the 2014 Fee Amendments. The Participants are amending this policy to include the updated definition of Non-Display Use as reflected in the Plans' amended fee schedules. The CTA Market Data Non-Display Use Policy is also being updated to specify that Redistributors that provide market data to their customers and/or data recipients for Non-Display Use of the data must submit an access request to the Administrator, and must require that the customers and data recipients of such market data complete an Exhibit A for the data use request.[17]

The Participants are also amending footnote two and footnote eight of the Plans' fee schedules to make clear that the Participants reserve the right to make the sole determination as to whether a data recipient's use is subject to the Non-Display Use fee or the device fee and, if subject to the Non-Display Use fee, the category of such Non-Display Use, consistent with the 2014 Fee Amendments and this amendment.

2. Amended Definition of Access Fee

To further clarify that the applicable fees that would be assessed are based on how data is used, the Participants are proposing to amend footnote ten of the Plans' fee schedules to clarify when the access fee is applicable. The access fees for Network A range from $750 to $1,750 and for Network B range from $400 to $1,250. The Participants are not proposing to modify the current access fees. Instead, the Participants are proposing to amend footnote 10 in the Plans' fee schedules to provide the access fee would be applicable if: (1) The data recipient uses the data for non-display; or (2) the data recipient receives the data in such a manner that the data can be manipulated and disseminated to one or more devices, display or otherwise, regardless of encryption or instructions from the redistribution vendor regarding who has authorized access to the data. In other words, if a subscriber has access to the data in a manner that enables that subscriber to engage in Non-Display Use of the data, the subscriber should be subject to the access fee. This amendment would make clear that the fees are based on the level of functionality made available by the vendor rather than any particular method of transmission that could potentially be modified to avoid the access fees. The Participants believe that this proposed amendment is consistent

[17] Exhibit A can be found on the Plans' Web site at *https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/Exhibit%20A%20-%20CTA%20-%20Internal%20and%20External%20Distribution.pdf.*

with how access fees are currently charged and would remove any ambiguity for subscribers.

For example, if a subscriber is receiving a stream of consolidated quotation and last sale information from a vendor, and that stream of data can then be used by the subscriber as an input into its own systems and software, then the subscriber will be subject to the access fee because it is able to make Non-Display Uses of the data. Additionally, if a subscriber is able to access a vendor's servers, choose what data to download onto its own system, and then incorporate that data into the subscriber's system and software, then the subscriber will be subject to the access fee. If, however, a subscriber is accessing a platform provided by a third-party where the data is being incorporated into and manipulated by the third-party's software, then the subscriber accessing that platform will not be subject to the access fee; instead, the third-party software provider will be subject to the access fee.

This proposed amendment is designed to make the applicability of the access fee depend upon the functionality made available by a vendor rather than get into a technical discussion of whether a form of transmission constitutes a ''data feed'' per se. In essence, if the data is delivered in a format that allows for non-display use, then such data delivery is tantamount to a data feed because it is a delivery format that is not controlled either in the entitlements or how the data is displayed. This approach to defining the applicability of the access fee will ensure that vendors that are providing the same level of functionality to their subscribers are not permitted to charge differing fees. As a result, the Participants believe that the revised definition will place all vendors on an equal footing so as to maintain a balanced, fair, and equitable competitive landscape.

3. Limited Scope of Proposed Amendment

So as to avoid any misplaced concern, the Participants reiterate that the Non-Display Use and access fees are not applicable to a Non-Professional User, and therefore the proposed amendments are not applicable to Non-Professional Users. As previously stated, the 2014 Fee Amendments established fees for Non-Display Uses of data and reduced the device fees assessed on Professional Subscribers. Therefore, regardless of whether a Non-Professional User is receiving a data product that could be subject to the Non-Display Use and access fees, a Non- Professional User's vendor would only be charged $1.00 for the data product being made available to a Non-Professional User.[18] While the Participants cannot control the pricing charged by vendors for usage of the vendors' data products, such Non-Professional User's fees would not change in any way as a result of this proposed amendment.

Further, it is important to note the distinction between the fees charged to a brokerage platform that receives data and uses it for multiple purposes (including providing displays to its customers) versus the fees charged to display-only users who simply access that platform to view the data. Although it is true that the firms providing these types of platforms could be charged Non-Display Use and access fees because of their receipt and use of data for multiple purposes, that does not mean that the customers of such a platform would be charged the same fees. If a customer has access to uncontrolled data on a platform, then the firm running the platform would be charged an access fee. Additionally, if the platform made Non-Display Use of that data, then the firm would also be charged a Non-Display Use fee, and if the use was on behalf of both itself and its customers, it would be charged a Category 1 and a Category 2 Non-Display Use fee.

However, customers accessing that display platform only to view the data would not be charged either the Non-Display Use fee or the access fee. As such, even if the platform had 500 users, the firm providing the platform would be charged only once for its Non-Display Use on behalf of its customers, but the customers would not be individually assessed the Non-Display Use or access fees. Instead, a Professional Subscriber would be charged at most $45 per unit for accessing the firm's platform.

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 clarification as establishing or changing fees and are submitting the amendment for immediate effectiveness.

[18] Unlike Professional Subscribers, Non-Professional Users are not directly billed by the Network Administrator, but instead the vendors providing the quotation and last sale information to Non-Professional Users are billed for any usage. The fee schedule states as much in connection with the Non-Professional User fee. None of the other fees contain this reference to charging vendors for use by Non-Professional Users because such users are not charged those fees.

D. Development and Implementation Phases

See Item C above.

E. Analysis of Impact on Competition

The amendments proposed herein 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 ''Act''). Additionally, the Participants do not believe that the proposed amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act. The Participants have submitted this amendment to simply clarify the applicability of the Non-Display Use and access fees established in the 2014 Fee Amendments.

As explained in the 2014 Fee Amendments, the Non-Display Use fees were established in response to the proliferation of the use of data for dark pools and other non-display trading applications. In conjunction with the establishment of Non-Display Use fees, the Participants reduced the rates for Professional Subscriber display devices in hopes of fostering the widespread availability of real-time market data. At the same time, the Non-Display Use fees allowed those who make Non-Display Uses of data to make appropriate contributions to the costs of collecting, processing, and redistributing the data. The clarification proposed herein maintains the balance struck by the Participants in reducing the device fee while establishing the Non-Display Use fees.

Additionally, the Participants believe that the amendment will have a positive effect on competition because the amendment will ensure that all vendors are classifying their customer's usage in the same manner. Following the 2014 Fee Amendments, the Participants believe that certain vendors have been mischaracterizing the usage of their customers as being subject solely to the device fees despite the fact that the data was being delivered in an uncontrolled form that enabled their customers to integrate the data into their own systems and software for Non-Display Use. This mischaracterization led to certain vendors offering their customers lower fees, to the detriment of other vendors who properly characterized their customers' usage as subject to the Non-Display Use and access fees. By eliminating the ambiguity in the Plans' fee schedules, the Participants believe that all vendors will be subjected to and subject their customers to similar fees for similar uses of data.

Without detailed information from vendors,[19] the Participants are unable to calculate the actual number of subscribers that are going to be affected by the proposed amendment; however, due to the limited application of the Non-Display Use and access fees, the Participants believe that the change will not be widespread. First, the proposed amendment would have no effect on Non-Professional Users regardless of the type of data product the Non-Professional User was receiving; such users would only be charged $1.00 for use of market data. Second, the Participants believe that some users might be receiving a data product in a format that provides a level of access to data that they do not need based on how they are using the data. If a subscriber were not making Non-Display Uses of market data, then such subscriber would not need the enhanced service and could switch to a display-only data product that would be subject to the lower device fees. Because the subscriber was not making Non-Display Uses of the market data, the switch would cause the subscriber to be in exactly the same position as it is today—it would be able to continue using the market data in the same manner as it previously viewed it while paying only the device fee. Finally, the Participants believe that only a small number of vendors are not correctly reporting their customers' usage of data, and this proposed amendment is intended to close an unintended loophole that certain vendors are exploiting.

In connection with the previously proposed amendment, Bloomberg claimed that the proposal was an unfair burden on competition because Bloomberg is ''asked to disclose all of its customers to the Exchange, including the specific method by which they consume data.'' Bloomberg claimed that such a request is to obtain ''confidential information under the guise of the SRO cloak,'' implying that this information will be used to market exchanges' proprietary data products.[20] As described above, however, this data is already required by the administrator as a necessary part of its administrative functions to be able to audit fees billed to data users, and is not being requested by an individual exchange for its own benefit. As it always has been the case, other than non-professional subscribers, the administrator directly bills customers of vendors that have been reported by a vendor as a professional device user or using the data for non-display purposes. As a result, the information being requested is necessary to carry out the administrator function. Direct billing, and therefore the need for this information, long predates even the 2014 Fee Amendments. It is unclear why Bloomberg and other commenters believe that the proposed amendment has anything to do with this longstanding (and heretofore unchallenged) requirement.

Moreover, the administrator is subject to information barriers which prevent it from disclosing confidential customer information with the exchange's business units.

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

As previously stated, the Participants have amended the CTA Market Data Non-Display Use Policy to implement the proposed Amendments. A copy of the changes to the Non-Display Use Policy is attached to the Amendment.

G. Approval by Sponsors in Accordance With Plan

Section XII (b)(iii) of the CTA Plan provides that ''[a]ny addition of any charge to . . . the charges set forth in *Exhibit E* . . . shall be effected by an amendment to this CTA Plan . . . that is approved by affirmative vote of not less than two-thirds of all of the then voting members of CTA. Any such amendment shall be executed on behalf of each Participant that appointed a voting member of CTA who approves such amendment and shall be filed with the SEC.'' Further, Section IX(b)(iii) of the CQ Plan provides that ''additions, deletions, or modifications to any charges under this CQ Plan shall be effected by an amendment . . . that is approved by affirmative vote of two-thirds of all the members of the Operating Committee.''

The Participants have executed this Amendment and represent not less than two-thirds of all of the parties to the Plan. That satisfies the Plans' Participant-approval requirements.

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

1. In General

The Participants took a number of factors into account in deciding to propose the amendments contained herein. First, the administrator works closely with vendors and customers to assess and analyze the different methods by which vendors make data available to their customers. The Participants have determined that certain vendors are providing non-display functionality via their market data products but nevertheless are reporting that their customers are only subject to the lower display device charges based on a skewed reading of the Non-Display Use and access fees.

Significantly, the Participants discussed their findings with the Advisory Committee. The Advisory Committee includes a representative of a broker-dealer with a substantial retail investor customer base, a broker-dealer with a substantial institutional investor customer base, an alternative trading system, a data vendor, and an investor. It also includes other industry representatives having deep market data experience. The Advisory Committee members attended and participated in meetings of the Participants in which the proposed amendment was discussed in length. During these meetings, no Advisory Committee member voiced an opposition to the proposed amendment, and some were quite vocal in their support of the need to level the competitive imbalance that currently exists as a result of the misinterpretation by certain vendors of the Non-Display and access fees.

2. The Proposed Amendment Will Have No Impact on Most Individual Investors

Non-Professional Users (*i.e.,* individual investors) will not be impacted by the proposed amendment. As described above, Non-Professional Users are not subject to Non-Display Use, access, or device fees, regardless of the type of data product they receive. Rather, as provided for on the Fee Schedules, the only charge applicable to Non-Professional Users is the $1.00 monthly charge and this charge is applicable to any use of the data by a Non-Professional User. Therefore, this proposed amendment will have no effect on the fees paid by Non-Professional Users.

3. Vendor Fees

Fees imposed by data vendors (which the Commission does not regulate), rather than the fees imposed under the

[19] As previously mentioned though, Bloomberg, in its comment letter on the previously filed amendment, stated that although it rents out more than 300,000 terminals, it only claimed the proposed amendment would impact ''hundreds'' of its customers.

[20] Bloomberg Letter at 8.

national market system plans account for a significant majority of the global market data fees incurred by the financial industry. Market data vendors may significantly mark-up national market system fees or incorporate that data into the vendors' own market data products. The fees the market data vendors charge are not regulated and there is limited transparency into how their rates are applied. In any event the vendors' fees do not result in any additional revenues for the Participants; the vendors alone profit from them.

4. The Proposed Amendment Resolves the Inequitable Application of Non-Display Use and Access Fees as a Result of the Misinterpretation

The Participants believe that the proposed amendment is fair and reasonable and provides for an equitable allocation of dues, fees, and other charges among vendors, data recipients and other persons. This proposed amendment is not motivated by a plan to increase fees or revenues, but rather to ensure that the 2014 Fee Amendments are applied correctly and consistently by all vendors. In a perfect world, this proposed amendment would not result in any changes to revenue because data recipients are already be subject to the 2014 Fee Amendments and they should be reporting usage correctly. However, as the Bloomberg Letter exposes, there is at least one vendor (Bloomberg) that has not been accurately reporting its Bloomberg SAPI product.

For the reasons discussed below, the Participants cannot conduct a precise analysis of what changes to revenue would accrue if this amendment were to go into effect. Indeed, to date, the administrator cannot project whether this proposed amendment would result in any revenue changes because it is not known whether, and how many, vendors are not accurately reporting usage. The Participants are therefore unable to forecast what revenue increase, if any, may result from the proposed amendment, because only those vendors utilizing a misinterpretation of the 2014 Fee Amendments have the information necessary to enable the Participants to calculate the effects of closing the perceived loophole.

Nevertheless, the Participants have done a general analysis, as described below, based upon the comments received on the prior proposal. Specifically, as demonstrated by the Bloomberg comment, we know that at least one vendor is not reporting correctly and it has refused to provide information to the administrator. However, Bloomberg acknowledges in its letter that if it correctly applied the 2014 Fee Amendments, ''hundreds'' of its customers would be affected.

Because Bloomberg has refused to provide any information, the Participants have no way of knowing whether 200 customers or 999 customers would be impacted, or somewhere in between. In addition, some of these customers may only need to receive the data in a display format and therefore not be impacted at all. Regardless of the actual number of Bloomberg customers, there would not be a one-to-one correlation between the number of customers receiving CTA/CQ data over the Bloomberg SAPI and the number of additional access fees and Non-Display Use fees that would be charged if Bloomberg correctly reported its customers' usage. Specifically, Bloomberg is likely currently reporting those ''hundreds'' of data recipients as Professional Device Users, which means the customer that Bloomberg is referring to is in fact a person as opposed to a firm. A customer firm of Bloomberg may subscribe multiple times to the Bloomberg SAPI feed for its individual users. In that case, because access fees and Non-Display Use fees are charged once at a firm level, that Bloomberg customer firm would likely be subject to a single access fee and Non-Display Use fee for multiple Bloomberg SAPI connections. Moreover, a Bloomberg firm customer that subscribes to the Bloomberg SAPI may already be paying an access fee and Non-Display Use fees, in which case, correctly reporting the Bloomberg SAPI as a data feed would not result in any additional fees to such customer. Additionally, the Participants believe that many data users that are currently taking high-priced vendor products such as Bloomberg's SAPI, providing what is for those users unnecessary functionality, may switch to other products so as to avoid having to pay any additional charges they may face once the non-display functionality is accurately reported. Any such switch will reduce any potential revenue increase resulting from the clarification. In sum, although the Participants are aware of certain vendors inaccurately reporting data usage, they do not believe that there has been a widespread misinterpretation of the 2014 Fee Amendments. Accordingly, the Participants generally do not believe that this proposed amendment would result in a material increase in revenue.

More importantly, however, the Participants are concerned about the possible consequences of failing to close this perceived loophole. In particular, the level of access provided by the misreported products is roughly equivalent to that provided by the products offered by vendors reporting accurately. Yet, those vendor's customers are not paying what other vendor's customers pay for the similar services. In order to maintain the competitive balance, it is likely that, absent the clarification, the market vendors that are now accurately reporting may feel compelled to take advantage of this perceived loophole to reduce their competitors' untoward advantage, and, if they do so, this may reduce the market data revenue pool available to the Participants. The failure to close this perceived loophole therefore could result in substantial disruptions to the market data funding mechanism.

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, among other things: (1) Whether the impact of the 2014 CTA/CQ Fee Amendments on

market data users has been consistent with the representations of the Participants; (2) the number of market data users that would be impacted by these Amendments; (3) the impact these Amendments would have on, for example, the fees paid by market data users; and (4) whether the Amendments would have a disproportionally greater impact on certain segments of users (*e.g.,* small and midsize trading firms). Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments are 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 SR–CTA/CQ–2017–04 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 SR–CTA/CQ–2017–04. 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 Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Amendments that are filed with the Commission, and all written communications relating to the Amendments 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 Amendments also will be available for inspection and copying at the principal office of the CTA.

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 SR–CTA/CQ–2017–04 and should be submitted on or before December 11, 2017.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2017–25027 Filed 11–17–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82072; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Fortieth 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

November 14, 2017.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on October 19, 2017, the Participants [3] 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 40th Amendment to the NASDAQ/UTP Plan (''Amendment'').[5] The Amendment proposes to modify the text of the fee schedule of the Plan to conform the text of the Plan to what was described in both the transmittal letter for the Thirty-Third Amendment to the Plan and the Commission's public notice of the filing of the Thirty-Third Amendment to the Plan.[6]

The original filing and notice included the following language designed to direct Participants to look to the regular fee schedule: ''but the data may be fee liable under the regular fee schedule.'' [7] Due to what the Participants state was an inadvertent omission, the language described in the transmittal letter and included in the public notice of the filing was omitted from the text of the Plan.[8] The Participants propose to amend the Plan language to state that the Non-Display fees do not apply when data is used to create derived data and the derived data is used for the purposes of solely displaying the derived data, and also to conform the Plan language to the original filing and notice directing subscribers to separate provisions of the Plan that still apply.[9] Thus, the following conforming language would be added: ''but the data may be fee liable under the regular fee schedule.'' [10] No comments were received on this topic when the Thirty-Third Amendment was noticed.

Pursuant to Rule 608(b)(3)(i) under Regulation NMS,[11] 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.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The Participants are: Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; Chicago Board Options Exchange, Incorporated; 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, dated October 18, 2017 (''Transmittal Letter'').

[6] *See, e.g.,* Transmittal Letter at 1, 3; Securities Exchange Act Release No. 73279 (October 1, 2014), 79 FR 60522, (October 7, 2014) (''October 2014 Non-Display Filing'').

[7] *See* October 2014 Non-Display Filing, 79 FR at 60525.

[8] *See* Transmittal Letter at 1, 3.

[9] *See* Transmittal Letter at 3.

[10] *See* Addendum 1 to the Thirty-Third Amendment to the Plan. The Addendum is marked to show the changes to the text of the Plan that the Participants proposed in the Thirty-Third Amendment.

[11] 17 CFR 242.608(b)(3)(i).