

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65866; File No. S7-24-89)

December 2, 2011

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 26 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 Amex, Inc., and NYSE Arca, Inc.

Pursuant to Rule 608 of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> notice is hereby given that on November 11, 2011, the operating committee (“Operating Committee” or “Committee”)<sup>2</sup> 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.<sup>3</sup> This amendment represents Amendment No. 26 (“Amendment”) to the Plan and

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<sup>1</sup> 17 CFR 242.608.

<sup>2</sup> The Plan Participants (collectively, “Participants”) are the: BATS Exchange, Inc. (“BATS”); BATS Y-Exchange, Inc. (“BATS Y”); Chicago Board Options Exchange, Incorporated (“CBOE”); Chicago Stock Exchange, Inc. (“CHX”); EDGA Exchange, Inc. (“EDGA”); EDGX Exchange, Inc. (“EDGX”); Financial Industry Regulatory Authority, Inc. (“FINRA”); International Securities Exchange LLC (“ISE”); NASDAQ OMX BX, Inc. (“BX”); NASDAQ OMX PHLX LLC (“PHLX”); Nasdaq Stock Market LLC (“Nasdaq”); National Stock Exchange, Inc. (“NSX”); New York Stock Exchange LLC (“NYSE”); NYSE Amex, Inc. (“NYSEAmex”); and NYSE Arca, Inc. (“NYSEArca”).

<sup>3</sup> 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

proposes to harmonize the price structures among the U.S. national market system plans by replacing the annual administrative fees that the Participants impose in respect of real-time data with monthly access fees. 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 Participants propose to harmonize the price structures among the U.S. national market system plans by replacing the annual administrative fees that the Participants impose in respect of real-time data with monthly access fees. The proposed Nasdaq/UTP Plan access fees are similar to those that the Network A and Network B Participants impose under the CTA and CQ Plans and that the OPRA Participants impose under the OPRA Plan.

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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).

The Participants propose to establish the monthly fee for access to UTP Level 1 real-time data feeds at \$1500 for direct access and at \$500 for indirect access.

The Participants propose to impose the direct access fee on parties that receive access to any one or more UTP Level 1 real-time data feeds by means of a linkage or interface directly with the Plan’s Securities Information Processor (Nasdaq) via an extranet or other connection that Nasdaq has approved. The Participants propose to impose the indirect access fee on parties that receive “indirect access” to any one or more UTP Level 1 real-time data feeds by means of a data feed service that a third-party data feed provider makes available. Distributors receiving access both directly and indirectly shall be liable only for direct access fees.

The references to “data feeds” would include the receipt of data in an uncontrolled format. The data recipient is responsible for the telecommunications facilities necessary to access data.

Currently, the Participants impose the following annual administrative fee on distributors for access to UTP Level 1 Service:

Delayed distributor	\$250
0–999 real-time terminals	\$500
1,000–4,999 real-time terminals	\$1,250
5,000–9,999 real-time terminals	\$2,250
10,000+ real-time terminals	\$3,750

The Participants propose to replace each of the real-time administrative fees with the access fees. As a result, the Participants propose to delete the real-time annual administrative fees from the fee schedule. The \$250 annual administrative fee that the Participants impose on delayed distributors would remain in effect.

The Participants project that replacing the annual administrative fees with monthly access fees would increase annual revenues received under the Nasdaq/UTP Plan approximately five percent for 2012.

From an administrative perspective, the administrator under the Nasdaq/UTP Plan would require parties with direct or indirect access to UTP Level 1 real-time data feeds to enter into the same market data agreements that they are required to enter into today.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed Amendment by means of their execution of the Amendment. The Participants propose to make the rate changes effective for calendar year 2012.

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 Act. The access fees amount to a competitive response to the access fees that the Participants in the CTA, CQ and OPRA Plans impose. The proposed monthly access fees and the monthly access fees that currently apply under those other national market system plans compare as follows:

	<u>Network A</u>	<u>Network B</u>	<u>OPRA</u>	<u>Proposed under NASDAQ/UTP Plan</u>

Direct Access:				
Last Sale	\$1,000	\$350		
Bid/Ask	\$1,100	\$400		
Total	\$2,100	\$750	\$2,500 <sup>4</sup>	\$1,500
Indirect Access				
Last Sale	\$500	\$200		
Bid/Ask	\$700	\$250		
Total	\$1,200	\$450	\$600	\$500

The Participants in the CTA and CQ Plans have imposed access fees since the Commission declared the plans effective in the 1970s. Those fees went unchanged from the rates initially adopted in the 1970s until 2009, when the Participants in those Plans raised them to the levels indicated above. The CTA and CQ Plan Participants coupled raising those fees with eliminating program classification charges, stating that the net result would be approximately revenue neutral. In its approval order,<sup>5</sup> the Commission found that the replacement of the program classification charges with the hike in the access fees is consistent with Rule 608(b)(2) of the Act. It stated that:

The Commission believes that eliminating program classification charges and replacing them with separate fees for the receipt of Network A and Network B market data are fair and reasonable and provide for an equitable allocation of dues, fees, and other charges among vendors, data recipients and other persons using CTA Network A and Network B facilities.<sup>6</sup>

<sup>4</sup> The total OPRA Plan direct access fee of \$2,500 consists of a \$1,000 monthly direct access fee and a \$1500 monthly redistribution fee that OPRA imposes on vendors that distribute OPRA data to any person, whether on a real-time or delayed basis.

<sup>5</sup> See Securities Exchange Act Release No. 61226 (December 22, 2009); 74 FR 68893 (December 29, 2009) (SR-CTA/CQ-2009-02).

<sup>6</sup> Id.

The Participants believe that the same holds true for the Nasdaq/UTP Plan's proposal. The proposed access fees compare favorably to those currently imposed under the CTA, CQ and OPRA Plans, including those approved by the Commission less than two years ago. The Nasdaq/UTP Plan Participants do not impose the program classification charges that the CTA and CQ Plan Participants eliminated. In addition to the favorable comparability of the Nasdaq/UTP Plan Participants' proposed access fees, the Plan's other charges also compare favorably to their CTA, CQ and OPRA Plan counterparts. These include device charges, charges for nonprofessional subscriber services, per-query fees, and television ticker fees.

In addition to the CTA, CQ and OPRA Plans, many individual exchanges around the world impose access fees for the receipt of market data feeds. On the other hand, few exchanges impose annual administrative fees.

As a result, this Amendment promotes consistency in price structures among the national market system plans, as well as consistency with the preponderance of other market data providers. It would make access fees easier to administer and enable data recipients to compare their charges under the respective national market system plans more easily. It would make for a more straightforward and streamlined administrative process for both the network administrator and the vendors.

Access fees allow those who gain access to the Plan's data feeds to contribute an appropriate amount for their receipt of market data under the Plan. They provide for an equitable allocation of dues, fees, and other charges among data feed customers, end users and others receiving and using market data made available under the Plan.

The Participants propose to impose the access fees uniformly on all vendors that receive UTP Level 1 real-time data in a data feed/uncontrolled format (including members of the

Participant markets and non-members). The Participants do not believe that the proposed plan Amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.

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 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 A(1) above.

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

The Participants believe that the level of the access fee allows vendors to contribute an appropriate amount for their receipt and use of market data under the Plan. The access fees amount to a competitive response to the access fees that the Participants in the CTA, CQ and OPRA Plans impose.

The Participants believe that the proposed access fees are fair and reasonable and provide for an equitable allocation of dues, fees, and other charges among vendors, data recipients and other persons using the Participants' facilities.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not Applicable.

III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 26. 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 e-mail to [rule-comments@sec.gov](mailto: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 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 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 website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for website 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 [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(27).