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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88385; File No. S7-24-89]

Joint Industry Plan; Order Approving Forty-Fifth Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

March 13, 2020.

I. Introduction

On September 11, 2019, participants¹ 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 Privileges Basis (“Nasdaq/UTP Plan” or “Plan”) filed² with the Securities and Exchange Commission (“SEC” or “Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)³ and Rule 608 of Regulation NMS thereunder,⁴ a proposal to amend the Nasdaq/UTP Plan.⁵ This

¹ These participants are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; The Investors’ Exchange LLC; Long-Term Stock Exchange, Inc.; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX, Inc.; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc. (each a “Participant” and collectively, the “Participants”).

² See Letter from Robert Books, Chairman, Operating Committee, UTP Plan, to Vanessa Countryman, Secretary, Commission (dated September 6, 2019).

³ 15 U.S.C 78k-1(a)(3).

⁴ 17 CFR 242.608.

⁵ The Nasdaq/UTP Plan, which governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities is a “transaction reporting plan” under Rule 601 of Regulation NMS, 17 CFR 242.601, and a “national market system plan” under Rule 608 of Regulation NMS, 17 CFR 242.608. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR at 20891 (April 26, 2007).

amendment represents the Forty-Fifth Amendment to the Plan (“Amendment”). The Participants have proposed to resolve textual inconsistencies in Plan provisions governing the dissemination of last-sale price reports by the Processor⁶ during a Regulatory Halt.⁷ The Amendment was published for comment in the Federal Register on January 28, 2020.⁸ One comment letter was received.⁹ This order approves the Amendment to the Plan.

II. Description of the Proposal

The Plan currently includes inconsistent language with respect to the Processor’s ability to disseminate last-sale price reports during a Regulatory Halt. Section X.A of the Plan prohibits the Processor from including in the consolidated tape during a Regulatory Halt any last-sale reports. Section X.C, however, includes language that specifically permits the Processor to “collect and disseminate Transaction Information” during a Regulatory Halt.

The Participants have stated that, in practice, the Processor has been following Section X.C during Regulatory Halts and will immediately disseminate last-sale price reports during a Regulatory Halt. The Participants believe that the Processor’s current practice helps to reduce inefficiencies and confusion among market participants with respect to the operation of the Plan during “race conditions,” when it might be unclear whether the trade reported by the Participant occurred before or after the Participant had received notice of the Regulatory Halt. As a result, the Participants have determined it appropriate to amend the language of the Plan to resolve the

⁶ See Section III.Q of the Plan (defining “Processor”).

⁷ See Section III.S of the Plan (defining “Regulatory Halt”).

⁸ See Securities Exchange Act Release No. 88017 (January 23, 2020), 85 FR at 5062 (January 28, 2020).

⁹ See Letter from Kelvin To, Founder and President, Data Boiler Technologies LLC, to Vanessa Countryman, Secretary, Commission (dated February 4, 2020). The comment letter is not germane to the Amendment.

inconsistent language described above in order to confirm that the Processor may continue to disseminate last-sale price reports during a Regulatory Halt. In addition, the Amendment would align the Plan language with a corresponding amendment being proposed by the CTA Plan.¹⁰

III. Discussion

After careful review, the Commission finds that the Amendment is consistent with the requirements of the Act and the rules and regulations thereunder.¹¹ In particular, the Commission finds that the amendment is consistent with Section 11A of the Act which provides, among other things, that the Commission may prescribe rules as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in securities and the fairness and usefulness of the form and content of such information.¹² The Commission also finds that the Amendment is consistent with Rule 608 of Regulation NMS, which provides that the Commission shall approve an amendment to a Plan if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and 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.¹³

The Commission believes that the Amendment furthers these goals by eliminating any potential uncertainty in determining whether a trade reported to the Processor during race

¹⁰ See Securities Exchange Act Release No. 88016 (January 23, 2020), 85 FR at 5060 (January 28, 2020) (proposal to amend CTA Plan).

¹¹ The Commission has considered the Amendment's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² See 15 U.S.C. 78k-1(c)(1)(B).

¹³ See 17 CFR 240.608(b)(2).

conditions occurred before or after the Participant who reported the trade had received notice of a Regulatory Halt. Under the Amendment, the Processor could presume that any such trades occurred before the Regulatory Halt, thereby allowing the Processor to continue publishing those trade reports to the consolidated tape. The Commission believes that market observers could derive benefits from continuing to learn about trades occurring just before a Regulatory Halt.

The Commission notes that it is also approving today a similar proposal by the CTA Plan Participants to eliminate an ambiguity in that Plan regarding how the Processor handles last-sale price reports during a Regulatory Halt.¹⁴ As a result, both Plans will have uniform provisions regarding how the Processor handles last-sale price reports during race conditions. The Commission believes that approving these two Plan amendments furthers the principle set forth in Section 11A of the Act that “[t]he linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors’ orders, and contribute to best execution of such orders”¹⁵ by harmonizing across the entire national market system how last-sale price reports for all NMS stocks are printed to the consolidated tape during race conditions and by eliminating any ambiguity in the duties of the Plan Processors in this regard.

¹⁴ See Securities Exchange Act Release No. 88384 (March 13, 2020) (File No. SR-CTA-2019-02).

¹⁵ 15 U.S.C. 78k-1(a)(1)(D).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act¹⁶ and the rules thereunder, that the Amendment to the Nasdaq/UTP Plan (File No. S7-24-89) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Assistant Secretary.

¹⁶ 15 U.S.C. 78k-1.

¹⁷ 17 CFR 200.30-3(a)(29).

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