By the Commission.

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83149; File No. S7–24–89]

Joint Industry Plan; Order of Summary Abrogation of the Forty-Second 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

May 1, 2018.

I. Introduction

Notice is hereby given that the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] is summarily abrogating the Forty-Second 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 (''Nasdaq/UTP Plan'' or ''Plan'').[3]

On March 5, 2018 [4] the participants of the Plans (''Participants'') [5] filed with the Commission a proposal to amend the Nasdaq/UTP Plan (''Amendment''), pursuant to Section 11A of the Act,[6] and Rule 608 thereunder.[7] The Amendment, which was effective upon filing pursuant to Rule 608(b)(3)(i) of Regulation NMS,[8] modified the Plan's fee schedule to adopt changes to the Nonprofessional Subscriber Enterprise Cap and Per Query Fees.

II. Description of the Amendment

A. Amendments to Enterprise Cap

The Amendment modified the Plan's fee schedule to increase the Nonprofessional Subscriber Enterprise Cap (''Enterprise Cap'') from $686,400 to $1,260,000. The Participants stated that as a result of industry consolidation, the non-professional subscriber base for entities subject to the Enterprise Cap may suddenly increase, and whereas before two entities may have benefited slightly from the Enterprise Cap, a combined entity could achieve a substantial decrease in fees by using the Enterprise Cap. Consequently, the Participants stated, the increase of the Enterprise Cap was designed to maintain the status quo and should not have, in conjunction with the Per-Query Fee change described below, resulted in an increase of revenue to the Plan or fees for any particular entity.[9]

In addition, the Amendment modified the Plan to remove a provision relating to annual increases of the Enterprise Cap after a two-thirds vote of the Participants. In 2014 [10] the Participants amended the mechanism by which the Enterprise Cap would increase, from an automatic increase based on volume, to a requirement for an affirmative vote of the Participants. The Participants have not used this mechanism to increase the Enterprise Cap. The Participants believe that any future changes to the Enterprise Cap should be filed with the Commission and subject to public comment. Consequently, the Participants proposed to delete this provision.

B. Amendments to the Per-Query Fee

The Participants stated that because of the increase in the Enterprise Cap, there could have been broker-dealers that used the Enterprise Cap that, without a corresponding offset, could have faced an increase in fees. To offset the potential fee increase, the Amendment modified the text of the Plan's fee schedule to reduce the Plan's Per-Query Fee for broker-dealers with 500,000 or more non-professional subscribers from $.0075 to $.0025.

The Participants stated that by implementing a tiered structure for Per-Query Fees, the proposal was designed to provide an offset to those firms most likely affected by the Enterprise Cap increase (*i.e.,* those with a large non-professional subscriber base). Additionally, the Participants stated that the proposal would align the tiered structures for Network C with those of Networks A and B.

Pursuant to Rule 608(b)(3)(i) under Regulation NMS,[11] the Participants designated 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 Plan. As a result, the Amendment was effective upon filing with the Commission. The Amendment was published for comment in the **Federal Register** on March 29, 2018.[12]

III. Summary of Comments

The Commission received two comment letters in response to the Notice of Filing [13] and a response thereto from the Participants.[14] In its comment letter, SIFMA stated that the information provided by the Participants in the Amendment with respect to, among other things, cost, revenue, and customer data, is insufficient to permit the Commission to determine whether the Amendment is consistent with the Act.[15] SIFMA stated that only the Participants, and not SIFMA or other market participants, possess the information necessary to

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] 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).

[4] *See* Securities Exchange Act Release No. 82938 (March 23, 2018), 83 FR 13542 (March 29, 2018) (''Notice of Filing'').

[5] The Participants are: Cboe BYX Exchange; Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe 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.

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] 17 CFR 242.608(b)(3)(i).

[9] The Participants noted that very few entities take advantage of the Enterprise Cap.

[10] *See* Securities Exchange Act Release No. 73279 (October 1, 2014), 79 FR 60522 (October 7, 2014) (describing the history of the Per-Query Fees).

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

[12] *See* Notice of Filing, *supra* note 4.

[13] *See* letters from Melissa MacGregor, Managing Director, Securities Industry and Financial Markets Association (''SIFMA''), dated April 19, 2018 (''SIFMA Letter''), and Tyler Gellasch, Executive Director, Healthy Markets Association (''Healthy Markets''), dated April 30, 2018 (''Healthy Markets Letter''), to Brent J. Fields, Secretary, Commission.

[14] *See* Letter from Emily Kasparov to Brent J. Fields, Secretary, Commission, dated April 27, 2018 (''Participants' Response''). The Participants responded to the comments received on this Amendment, as well as on SR–CTA/CQ–2018–01, which amended the CTA/CQ plan in a parallel fashion.

[15] *See* SIFMA Letter, *supra* note 13 at 1–3. SIFMA also stated that absent data demonstrating a reasonable relationship between core data revenues and the costs of collecting and disseminating data, it is doubtful that maintaining the status quo with respect to market data fees is consistent with the Act. According to SIFMA, the governance structure for NMS plans is broken and market data fees are not restrained by competitive forces, thus maintaining the status quo with respect to market data fees could impose a burden on competition. *See id.* at 3.

evaluate the Amendment.[16] SIFMA also stated that, costs, and not revenue neutrality as the Participants suggest, is the relevant factor in assessing whether the Amendment is consistent with the Act.[17]

Healthy Markets[18] urged the Commission to summarily abrogate the Amendment on grounds that it is not appropriately justified, is discriminatory, and is contrary to the original purpose of the Enterprise Cap. Healthy Markets also stated that the Enterprise Cap should be eliminated as part of the broader process of modernizing the UTP fee schedules.

Specifically, Healthy Markets stated that the Participants failed to support their representations regarding industry consolidation and noted that the Amendment lacks any detailed justification or analysis.[19] In addition, Healthy Markets stated that the Participants' representation that the Amendment may be revenue neutral does not demonstrate that the Amendment is consistent with the Act whose goal is to protect the public interest by, amongst other things, promoting competition, the reasonable allocation of fees, and non-discrimination.[20] Healthy Markets also states that the Amendment is discriminatory, and that it adds complexity to an already complex process.[21] Lastly, Healthy Market stated that the Enterprise Cap should be eliminated as part of the broader process of modernizing the UTP fee schedules to simply allow for the non-discriminatory, consistent access and pricing of public market data.[22]

In response, the Participants stated that the comments received are misguided or incorrect, and require no further response from the Participants.[23] In addition, the Participants stated that market participants have access to the information necessary to assess the impact of the Amendment on revenue,[24] asserting that data subscribers can readily apply the new fee schedule to their historical usage to project future usage and thereby determine whether the Participants' representations concerning the effect on revenue hold true.[25] The Participants also noted that only industry associations commented on the Amendment, and that individual market data subscribers could have commented on the Amendment had the Participants' analysis been incorrect.[26]

IV. Discussion

Pursuant to Section 11A of the Act[27] and Rule 608(b)(3)(iii) of Regulation NMS thereunder,[28] at any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that the amendment be re-filed in accordance with paragraph (a)(1) of Rule 608[29] and reviewed in accordance with paragraph (b)(2) of Rule 608,[30] 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 concerned that the information and justifications provided by the Participants are not sufficient for the Commission to determine whether the Amendment is consistent with the Act. Accordingly, the Commission believes that the procedures set forth in Rule 608(b)(2)[31] will provide a more appropriate mechanism for determining whether the Amendment is consistent with the Act.

The Commission believes that the Amendment raises questions as to whether the changes will result in fees that are fair and reasonable, not unreasonably discriminatory,[32] and that will not impose an undue or inappropriate burden on competition under Section 11A of the Act.[33]

The Commission does not believe that the Participants have provided sufficient information regarding, or adequate justification for, the changes described in the Amendment. While the Participants represent that they used certain data to calibrate the fee changes to achieve a revenue neutral outcome[34] none of that data is provided in the Amendment, nor do the Participants provide any such information in their response.[35] The Commission is also concerned that the Participants provided little information concerning the basis for, the anticipated revenue effects of, and the effects on market participants from, the Amendment. The Participants have not provided sufficient information for the changes to be closely scrutinized for fairness and reasonableness and the Amendment lacks support for the basis of, as well as the application and likely effect of, the fees to determine that the Amendment is not unreasonably discriminatory.

In addition, the Participants did not provide information to support their assertion that the increase of the Enterprise Cap is designed to maintain the status quo and should not, in conjunction with the Per-Query fee changes, result in an increase of revenue to the Plan or of fees to any particular entity.[36] The Participants lowered the Per-Query fee for firms with at least 500,000 non-professional accounts. However the filing does not indicate why the Participants chose to limit the lower fee to firms that have 500,000 non-professional subscribers. The Participants state that the Amendment does not impose any burden on competition that is not necessary or appropriate because it is revenue neutral and maintains the status quo. Because the Participants did not provide the Commission with sufficient data to support their assertion that the fee change should not result in an increase of revenue to the Plan or to fees for any particular entity, however, the Commission is unable to evaluate the Participants' assertions that the Amendment does not impose any burden on competition that is not necessary or appropriate.

V. Conclusion

For the reasons stated above, the Commission believes it necessary or appropriate to summarily abrogate the Amendment and terminate its status as immediately effective. The Commission believes that the procedures set forth in Rule 608(b)(2) of Regulation NMS[37] will provide a more appropriate mechanism for determining whether the Amendment is consistent with the Act. Therefore, the Commission believes that it 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, to summarily abrogate the Amendment.

[16] *See id.* at 1–3.

[17] *See id.* at 2.

[18] Healthy Markets also commented on other items that are not germane to the instant filing, such as broader recommendations for NMS Plans and Securities Information Processor Fees.

[19] *See* Healthy Markets Letter, *supra* note 13 at 3–4.

[20] *See id.*

[21] *See id.* at 5.

[22] *See id.*

[23] *See* Participants' Response, *supra* note 14 at 1–2.

[24] *See* Participants' Response, *supra* note 14 at 1.

[25] *See id.*

[26] *See id.*

[27] 15 U.S.C. 78k–1.

[28] 17 CFR 242.608.

[29] 17 CFR 242.608(a)(1).

[30] 17 CFR 242.608(b)(2).

[31] *Id.*

[32] 17 CFR 242.603(a)(1)–(2), 17 CFR 242.608, and 15 U.S.C. 78k–1(a)(1)(C).

[33] 15 U.S.C. 78k–1

[34] *See* Notice of Filing, *supra* note 4 at 13543.

[35] *See* Participants' Response, *supra* note 14.

[36] *Id.*

[37] 17 CFR 242.608(b)(2).

It is therefore ordered, pursuant to Section 11A of the Act,[38] and Rule 608 thereunder,[39] that the Forty-Second Amendment to the Nasdaq/UTP Plan (File No. S7–24–89) be, and hereby is, summarily abrogated. If the Participants choose to re-file the Amendment, they must do so pursuant to Section 11A of the Act and the Amendment must be re-filed in accordance with paragraph (a)(1) of Rule 608 of Regulation NMS [40] for review in accordance with paragraph (b)(2) of Rule 608 of Regulation NMS.[41]

By the Commission.

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83129; File No. SR–FINRA–2018–015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 6433 To Adopt the OTC Quotation Tier Pilot as Permanent

April 30, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 20, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) to adopt as permanent the minimum quotation sizes for OTC equity securities currently operating on a pilot basis, scheduled to expire on June 7, 2018.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the ''Rule'') to adopt as permanent the minimum quotation sizes applicable to quotations in OTC equity securities [3] that were proposed pursuant to File No. SR–FINRA–2011–058 and implemented on a pilot basis on November 12, 2012 (''Tier Size Pilot'' or ''Pilot'').[4] The Pilot was initially approved for a one-year term, has been extended ten times, and currently is scheduled to expire on June 7, 2018.[5]

The Pilot tiers were designed to: (1) Simplify the structure of the minimum quotation sizes; (2) facilitate the display of customer limit orders under Rule 6460 (Display of Customer Limit Orders) (''limit order display rule''); and (3) expand the scope of the Rule to provide for uniform treatment of the types and sources of quotations that would be subject to the Rule.[6] FINRA believes the Pilot has resulted in its intended objectives, and particularly notes that the Pilot has yielded a significant positive result with regard to increased display of customer limit orders. At the same time, market quality measures have been neutral (*i.e.,* unchanged) or slightly positive (*i.e.,* slightly improved) overall during the Pilot, as compared to the pre-Pilot period, as discussed more fully below. Accordingly, FINRA believes it is appropriate and consistent with the Act to adopt the Pilot tier sizes on a permanent basis.

Objectives of the Pilot

FINRA Rule 6433 sets forth the minimum quotation sizes applicable to the display of quotations in OTC equity securities on any inter-dealer quotation system that permits quotation updates on a real-time basis. The Rule provides different minimum quotation sizes that apply depending upon the price level of the bid or offer in the security.

Prior to the Pilot, which has been in effect since November 12, 2012,[7] Rule

[38] 15 U.S.C. 78k–1.

[39] 17 CFR 242.608.

[40] 17 CFR 242.608(a)(1).

[41] 17 CFR 242.608(b)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An OTC equity security is an equity security that is not an ''NMS Stock'' as defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term ''OTC equity security'' shall not include any Restricted Equity Security. *See* FINRA Rule 6420(f).

[4] *See* Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR–FINRA–2011–058) (''Original Proposal'').

[5] *See* Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)) (Order Approving File No. SR–FINRA–2011–058, as amended); *see also* Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to November 14, 2014; File No. SR–FINRA–2013–049); Securities Exchange Act Release No. 73299 (October 3, 2014), 79 FR 61120 (October 9, 2014) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to February 13, 2015; File No. SR–FINRA–2014–041); Securities Exchange Act Release No. 74251 (February 11, 2015), 80 FR 8741 (February 18, 2015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to May 15, 2015; File No. SR–FINRA–2015–002); Securities Exchange Act Release No. 74927 (May 12, 2015), 80 FR 28327 (May 18, 2015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to August 14, 2015; File No. SR–FINRA–2015–010); Securities Exchange Act Release No. 75639 (August 7, 2015), 80 FR 48615 (August 13, 2015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to December 11, 2015; File No. SR–FINRA–2015–028); Securities Exchange Act Release No. 76519 (November 24, 2015), 80 FR 75155 (December 1, 2015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to June 10, 2016; File No. SR–FINRA–2015–051); Securities Exchange Act Release No. 77923 (May 26, 2016), 81 FR 35432 (June 2, 2016) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to December 9, 2016; File No. SR–FINRA–2016–016); Securities Exchange Act Release No. 79401 (November 25, 2016), 81 FR 86762 (December 1, 2016) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to June 9, 2017; File No. SR–FINRA–2016–044); Securities Exchange Act Release No. 80727 (May 18, 2017), 82 FR 23953 (May 24, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to December 8, 2017; File No. SR–FINRA–2017–014); Securities Exchange Act Release No. 82153 (November 22, 2017), 82 FR 56300 (November 28, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Tier Size Pilot to June 7, 2018; File No. SR–FINRA–2017–035).

[6] *See* Order Approving File No. SR–FINRA–2011–058, 77 FR at 37458.

[7] *Regulatory Notice* 12–51 (November 2012); *see also Regulatory Notice* 12–37 (August 2012).