by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: November 27, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–29062 Filed 12–2–13; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 206(3)–3T; OMB Control No. 3235–0630, SEC File No. 270–571.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Temporary rule 206(3)–3T (17 CFR 275.206(3)–3T) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) is entitled: ''Temporary rule for principal trades with certain advisory clients.'' The temporary rule provides investment advisers who are registered with the Commission as broker-dealers an alternative means to meet the requirements of section 206(3) of the Advisers Act (15 U.S.C. 80b–6(3)) when they act in a principal capacity in transactions with certain of their advisory clients.

Temporary rule 206(3)–3T permits investment advisers also registered as broker-dealers to satisfy the Advisers Act's principal trading restrictions by: (i) Providing written, prospective disclosure regarding the conflicts arising from principal trades; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; (iii) making oral or written disclosure and obtaining the client's consent before each principal transaction; (iv) sending to the client confirmation statements disclosing the capacity in which the adviser has acted; and (v) delivering to the client an annual report itemizing the principal transactions.

Providing the information required by rule 206(3)–3T is necessary for investment advisers also registered as broker-dealers to obtain the benefit of the alternative means of complying with section 206(3) of the Advisers Act. Disclosures under the rule provide important investor protections when advisers engage in principal trades. Clients of advisers will primarily use the information to monitor principal trades in their accounts.

The Commission staff estimates that approximately 278 investment advisers make use of rule 206(3)–3T, including an estimated 11 advisers (on an annual basis) also registered as broker-dealers who do not offer non-discretionary services, but whom the Commission staff estimates will choose to do so and rely on rule 206(3)–3T. The Commission staff estimates that these advisers spend, in the aggregate, approximately 139,358 hours annually in complying with the requirements of the rule, including both initial and annual burdens. The aggregate hour burden, expressed on a per-eligible-adviser basis, is therefore approximately 501 hours per eligible adviser (139,358 hours divided by the estimated 278 advisers that will rely on rule 206(3)–3T).

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) The accuracy of the Commission's estimate of the burdens of the collections of information; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F St. NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 27, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28977 Filed 12–3–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70953; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment No. 31 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

November 27, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on November 20, 2013, the operating committee (''Operating Committee'' or ''Committee'')[3] of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The Plan Participants (collectively, ''Participants'') are the: BATS Exchange, Inc.; BATS Y-Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc.

(''Nasdaq/UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan.[4] This amendment represents Amendment No. 31 (''Amendment No. 31'') to the Plan and modifies the Plan's fee schedule without the expectation of incremental revenue to the Participants. The Participants voted in accordance with the requirements of the Plan[5] to make the following changes to the Plan's fee schedule: (1) Increase the Professional Subscriber Fee from $20 to $23 per month per interrogation device, the first such increase since 1997; (2) increase the Non-Professional Subscriber Enterprise Cap from $600,000 to $624,000 per month, and cap the maximum annual fee increase at four percent per year; (3) increase the Direct Access Charges from $1,500 per month to $2,500 per month; and, (4) establish a Redistribution Charge of $1,000 per month for redistributing Real-Time UTP Level 1 Service and $250 per month for redistributing Delayed UTP Level 1 Service (collectively, referred to herein as the ''Fee Changes''). Set forth below is a detailed description and analysis of each fee change. The Participants identified past attrition and anticipate continued attrition in the reporting and consumption of consolidated market data and anticipate that the Fee Changes will generate enough revenue to offset the revenue declines resulting from that attrition. The changes will be implemented on January 1, 2014.

Pursuant to Rule 608(b)(3)(i) under the Act, the Participants designated the Amendment No. 31 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, Amendment No. 31 has been put into effect upon filing with the Commission.

At any time within 60 days of the filing of Amendment No. 31, the Commission may summarily abrogate Amendment No. 31 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

1. Background

The Operating Committee is attempting for the second time this year to implement fee changes. On March 22, 2013, the Participants filed with the Commission Amendment No. 27.[6] That amendment revised the metric by which the Participants calculate the annual increase in the Enterprise Maximum. On March 27, 2013, the Participants filed with the Commission Amendment No. 28.[7] That amendment increased the Professional Subscriber device fee from $20 to $25 per month, introduced a new redistribution fee, and established a net reporting program.

Shortly before and after Amendment Nos. 27 and 28 were filed, members of the industry and of the Advisory Committee to the Operating Committee expressed concerns about the proposed fee changes and the process by which they were adopted.[8] The Thomson Reuters Letter voiced strong support for the Advisory Committee and Thomson Reuters' participation on the Advisory Committee, but commented that the Participants did not include input from the Advisory Committee in arriving at proposed fee changes set forth in Amendment 28. The SIFMA Letter made the same comment: ''We respectfully request that you require the Operating Committee to reconvene in open session with members of the Advisory Committee present to enable them to provide their views as industry representatives.'' [9]

In addition, the Thomson Reuters Letter and the SIFMA Letter commented that the Participants did not give the industry sufficient advance notice of the Amendment No. 28 fee changes to allow them to make the systems changes necessary to implement the changes. ''Thomson Reuters notes that 90 days advance notice of fee increases, rather than 30 days, is commonly used in the market data industry, in order to provide sufficient time to communicate changes to clients and answer their questions.'' [10]

In response, the Operating Committee determined to reverse the fee changes and to address the procedural deficiencies that the Thomson Reuters Letter and SIFMA Letter identified. On May 10, 2013, the Operating Committee filed Amendment No. 29 to the Plan, which reversed the changes that the Participants made in Amendment Nos. 27 and 28. Accordingly, the Participants did not implement the fee changes for the month of April 2013 or otherwise.

Rather, the Participants met with the Advisory Committee in May 2013 to receive the Advisory Committee's input. In addition, they discussed the proposed fee changes with Advisory Committee members and other industry representatives throughout the months of May, June and July of 2013.

In August, after those discussions and lengthy debate over multiple meetings, the Operating Committee approved a set of fee changes designed to allow the Participants to recover the revenues that they anticipate losing as a result of their permitting distributors to report on a net basis. They anticipate that the net result will not increase total Plan revenue collected.

Regarding the need for more advance notice of the changes, The Participants discussed the proposed Fee Changes with the industry throughout the summer and fall of 2013, and published a vendor notice on September 26, 2013, advising that the changes will become effective on January 1, 2014.[11] In the Participants view, vendors have had substantial time to change their data administration systems to accommodate

[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] Section IV(C)(2) of the Plan provides that ''the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to'' establish new fees or increase existing fees relating to Quotation Information and Transaction Reports in Eligible Securities. The affirmative vote of the Operating Committee conducted on August 7, 2013 and recorded in the official minutes of that meeting, was eleven in favor, two opposed, and two abstentions.

[6] *See* Securities Exchange Act Release No. 69215 (March 22, 2013), 78 FR 19029 (March 28, 2013) (''Amendment 27'').

[7] *See* Securities Exchange Act Release No. 69361 (April 10, 2013), 78 FR 22588 (April 16, 2013) (''Amendment 28'').

[8] *See* Letter to John Ramsay, Acting Director, Division of Trading and Markets, Commission, et al. from Ira D. Hammerman, Senior Managing Director & General Counsel, Securities Industry and Financial Markets Association, dated March 28, 2013 (the ''SIFMA Letter''); Letter to Chairperson White and Commissioners, Commission, from Gene L. Finn, Ph.D., dated April 24, 2013; Letter to the Commission, from Gene L. Finn, Ph.D., dated April 25, 2013; and Letter to Elizabeth M. Murphy, Secretary, Commission from Peter Moss, Managing Director, Thomson Reuters, dated May 7, 2013 (the ''Thomson Reuters Letter'').

[9] *See* SIFMA Letter at p. 4.

[10] *See* Thomson Reuters Letter at p. 2.

[11] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-10.*

the Fee Changes, as well as apply for net reporting.

To recover revenues that they anticipate will be lost to attrition, the Participants voted to increase the Professional Subscriber device fee, the Enterprise Maximum for Nonprofessional Subscriber usage, and the Direct Access fee, and to establish Real-Time and Delayed Redistributor fees. The Plan last increased the Professional Subscriber device fees in 1997. Since then, significant change has characterized the industry, stemming in large measure from technological advances, the advent of trading algorithms and automated trading, new investment patterns, new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research. Measures of Plan inputs and outputs have expanded dramatically, including the number of exchange participants, messages per period, message speed, and total shares and dollar volume of trading. Related measures of value to the industry have improved and related industry costs have fallen, including the cost per message, the cost per trade, and the cost per share and dollar volume traded.

In addition, the Fee Changes also move towards harmonizing fees under the Plan with fees under three other national market system plans: The CTA Plan, the CQ Plan and the OPRA Plan.

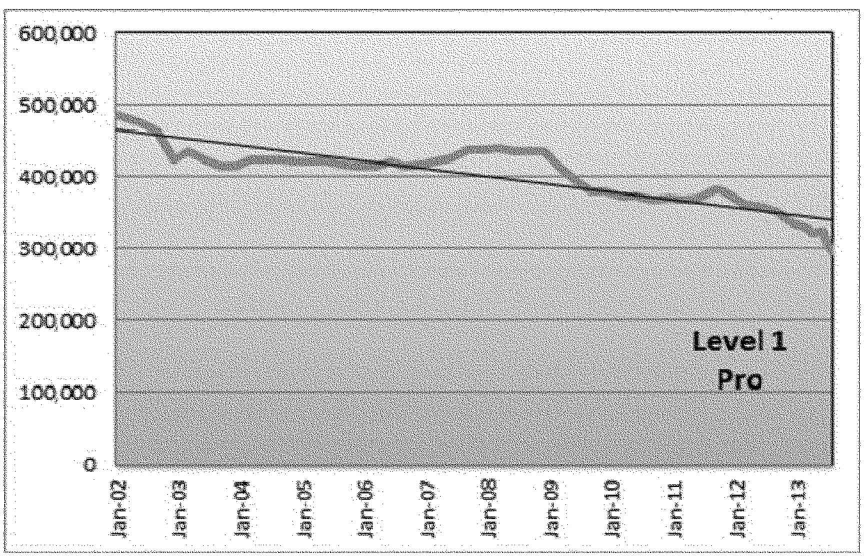
2. The Proposed Changes

a. Professional Subscriber Charges

Amendment 31 will increase the Professional Subscriber device fee to $23 per month. The current charge is $20 per month. The $20 fee has remained in place since 1997. Thus, the increase amounts to less than a two percent increase per year over a 16-year period. During that period, the amount of market data and the categories of information distributed through the UTP Level 1 Service have grown dramatically. The securities information processor under the Plan (the ''SIP'') has made hundreds of modifications to the UTP Trade Datafeed and the UTP Quotation Datafeed (''UQDF'') over the past fifteen years to keep up with changes in market structure, regulatory requirements and trading needs. These modifications have added such things as new messages, new fields, and new values within designated fields to the UTP Level 1 Service. They have caused the UTP Level 1 Service to support such industry developments as Regulation NMS, decimalization, limit up/limit down, and many other changes.

The growth in prices and quotes distributed over the UTP Level 1 Service has also been dramatic. For instance, from February 2005 to February 2013, the UTP UQDF 5-second peak message rate has increased by a multiple of 15 from 3,789 messages per second to 57,685 messages per second. Over that period, the daily peak rate has increased more than 3-fold to 136,500,547 messages.

At the same time, Professional Subscribers' usage of Level 1 data has been declining:



Professional Subscriber fees collected have declined as well. For example, as of September 30, 2011, the Plan's 382,862 Professional Subscribers paid $7,657,240 per month.[12] As of September 30, 2012, the Plan's 351,106 Professional Subscribers paid $7,022,120. As of September 30, 2013, the Plan's 295,192 Professional Subscribers paid $5,903,890. Assuming January 2014 Professional Subscriber usage stays constant at 295,192, net reporting would reduce total Professional Subscriber fees paid at $23 per Subscriber to approximately $6,789,416, over $860,000 below the level of Professional usage fees collected in September 2011.

Fees for UTP Level 1 compare favorably to fees for comparable Network A and B data. Under the CT/CQ Network A tiered structure, a firm reports how many display devices the Professional Subscriber employs; that number then is used to determine the tier within which the firm falls. Until recently, the Network A fees for Professional Subscribers ranged from $18.75 per device for firms employing Professional Subscribers who use more than 10,000 devices to $127.25 per device for an individual Professional Subscriber. In June of 2013, Network A lowered that range to $20 to $50 per device.[13] Also in June of 2013, Network

[12] Professional Subscriber counts are calculated and published quarterly and posted on utpplan.org. The latest quarterly figures reflect a 15 percent annual decline in Professional Subscribers. *See http://www.utpplan.com/.*

[13] Specifically, the Network A monthly fees for Professional Subscriber devices are $50 per month for users with 1 or 2 devices, $30 per month for users with 3 to 999 devices, $25 per month for users with 1,000 to 9,999 devices, and $20 per month for users with 10,000 or more devices. As a result of the fee change, firms with Professional usage between 1 and 29 devices pay lower rates while firms using more than 750 devices pay higher rates.

B combined the fees payable for a Professional Subscriber's receipt of quotation information and last sale price information and set the combined monthly fee at $24 per month. The combined $24 rate reduced costs for most Professional Subscribers, with the exception of a small number of data recipients who receive last sale or quotation information, but not both. Under the OPRA Plan, the device fee is currently $26 per month, and will rise to $27 per month on January 1, 2014.

b. Broker-Dealer Enterprise Maximums

The Participants do not require an entity that is registered as a broker/dealer under the Securities Exchange Act of 1934 to pay more than the ''Enterprise Maximum'' for any month for each entitlement system offering UTP Level 1 Service to Nonprofessional Subscribers. The ''Enterprise Maximum'' equals the aggregate amount of fees payable for distribution of UTP Level 1 Service to Nonprofessional Subscribers that are brokerage account customers of the broker/dealer. The Participants adopted the Enterprise Maximum in 2010 and set it at $600,000 per month for that year. The Plan currently provides that the amount of the Enterprise Maximum shall increase annually by an amount equal to the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent and to a determination by the Participants to waive the annual increase for any calendar year.

For 2013, the Enterprise Maximum remains at $600,000 per month. The Participants now propose to increase the amount of the Enterprise Maximum by four percent to $624,000, effective January 1, 2014.[14]

Simultaneously, the Plan Participants voted to change the potential for future growth of the Enterprise Maximum. Rather than basing the percentage increase in the annual composite share volume for the preceding calendar year, subject to an annual maximum increase of five percent, the Participants propose to permit such annual increases in the monthly Enterprise Maximum as to which they may agree by a majority vote, subject to a maximum increase in any calendar year of four percent. This proposed means for determining the increase in the broker-dealer Enterprise Maximum would reduce the amount of any one year's permissible increase from five percent to four percent and would better reflect inflation than does the current means. The maximum four percent increase is consistent with the average cost of living adjustment (''COLA'') as published by the Social Security Administration for the past 38 years. The reduction of the maximum annual increase from five percent to four percent, as well as the discretion given to the Participants to agree annually to a lower increase, or to no increase at all, should make the proposed change more palatable to the very small number of entities that take advantage of the Enterprise Maximum.

The proposed fee increase and methodology regarding future increases is consistent with recent changes implemented for Networks A and B. As a result of recent amendments, the monthly Network A broker-dealer enterprise maximum increased to $686,400 and the monthly Network B broker-dealer enterprise maximum increased to $520,000. Additionally, the methodology for determining future increases, if any, in the Enterprise Maximum is identical to the methodology that Networks A and B recently adopted.

c. Access Fees

Access fees are charged to firms who receive UTP Level 1 datafeeds. The fee depends upon whether the vendor receives the feed directly from the SIP, in which case the monthly fee is $1,500, as opposed to indirect receipt, which triggers a monthly fee of $500. The Plan charges only one access fee per firm regardless of the number of datafeeds that the firm and its affiliates receive. The Participants propose to raise the monthly direct access fee from $1,500 to $2,500. They estimate that the revised access fees would increase total Plan revenues by $1.6 million.

The Participants believe that increasing the Direct Access fee is fair and reasonable because today's datafeeds provide significant incremental value in comparison to the datafeeds that the Participants provided when they first set the access fees. For example, the datafeeds contain a vastly larger number of last sale prices and bids and offers. Since April 2006, the growth of quotes and trades per second has increased over 12,200 percent and 2500 percent, respectively. The datafeeds also contain far more information beyond prices and quotes, such as the national best bid and offer (''NBBO''), short sale restriction indications, circuit breaker tabs, retail price improvement indications, and, since April 2013, limit up/limit down information. In addition to the vast increase in content, there has been significant improvement in the latency of the datafeeds.

Further, datafeeds have become more valuable, as datafeed recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of datafeeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.

d. Redistribution Fee

The Participants propose to establish a new monthly charge of $1,000 for redistribution of Real-Time UTP Level 1 data and $250 for redistribution of Delayed UTP Level 1 data. This will not necessitate any additional reporting obligations. The redistribution charges would apply to any firm that makes UTP Level 1 available to any other entity or to any person other than its own employees, irrespective of the means of transmission or access. That is, all firms that redistribute any of UTP Level 1 data outside of their organization would be required to pay a redistribution fee. The fee would not apply to a firm whose receipt, use and distribution of market data is limited to its own employees in a controlled environment.

The proposed redistribution fee better harmonizes fees under the NASDAQ/UTP Plan with fees under the CTA, CQ and OPRA Plans. The CTA and CQ Plan Participants recently adopted redistribution charges of $1000 for the redistribution of Network A data and $1000 for the distribution of Network B data.[15] The OPRA Plan imposes a redistribution charge of $1,500 per month on every vendor that redistributes OPRA data to any person (or $650 for an internet-only service). Redistribution fees are also common for exchange proprietary data products.

The Participants note that vendors base their business models on procuring data from exchanges and turning around and redistributing that data to their subscribers. The costs that market data vendors incur for acquiring their inventory (*e.g.,* UTP Level 1) are very low, sometimes amounting only to their

[14] The impact of increasing the Enterprise Maximum is minimal. Currently, only one (1) firm reaches the Enterprise Maximum. In the aggregate, the combination of the Fee Changes and the net reporting option could reduce the fees payable by this firm in the absence of an Enterprise Maximum by over 35 percent, based on its September 2013 level of activity.

[15] *See* SR–CTA/CQ–2013–04, Securities Exchange Act Release No. 34–70010 (July 19, 2013), 78 FR 44984 (July 25, 2013; the ''CTA Release'').

payment of access fees. The proposed redistribution charges would require them to contribute somewhat more, relative to the end-user community.

3. Impact of the Proposed Fee Changes

As with any reorganization of a fee schedule, these changes may result in some data feed recipients paying higher total market data fees and in others paying lower total market data fees. The Participants anticipate that the Fee Changes will not generate enough revenue to offset attrition in reported consolidated market data activity data that they expect to take place subsequent to the Fee Changes. They anticipate that attrition will take three forms (''Anticipated Attrition'').

First, they anticipate that the increases in Professional Subscriber device fees will result in cancellations and a reduction in the number of devices that some firms use.

Second, several customer-usage trends have declined year-over-year since 2008, particularly declines in Professional Subscriber's consumption of consolidated market data. (More information on these declines can be found in the Participants' *Consolidated Data Quarterly Operating Metrics Reports.* Those reports can be found at *http://www.utpplan.com*). The decline in Professional Subscriber data usage has resulted from a challenging financial environment, and corporate downsizing, as well as a liberalization of the SEC's Vendor Display Rule that has permitted substitution of lower-cost and lower-value proprietary data product offerings.

As a result of these declines, revenues generated under the Plans have declined significantly. Furthermore, the rise in off-exchange trading has meant that a smaller portion of those revenues are [sic] allocated to exchanges. Since 2008, CTA/UTP market data revenue has declined 21 percent from approximately $483 million in 2008 to $382 million annualized through March of 2013, of which about $321 million was allocated to exchanges and $61 million to the Financial Industry Regulatory Authority, Inc. (''FINRA''). The significant portion of consolidated revenue allocated to FINRA ($61 million) reflects the growing share of off-exchange trading by brokers, which is largely rebated back to broker-dealers and significantly reduces the consolidated market data revenue allocated to exchanges.

Third, in response to industry requests, the Operating Committee has determined to permit distributors to report on a ''net'' basis. This administrative change would allow customers that elect to report on a net basis to eliminate duplicate billing of an individual user.[16] It will allow the distributor to directly report Professional, internal Subscribers of UTP Level 1 data on a net basis.[17] Net reporting better harmonizes reporting and administration under the Plan with reporting and administration under the CTA and CQ Plans, which offer net reporting in the form of the ''Multiple Instance, Single User'' (''MISU'') program.[18]

Based on a careful review of historical usage, it is anticipated that twelve to fifteen percent of Professional Subscribers will qualify to report on a net basis, causing a proportional decline in aggregate assessed fees. Those broker-dealers and other internal market datafeed recipients that take advantage of net reporting are likely to see a reduction in their market data costs. The Participants note that the rate of adoption of the net reporting option is uncertain and the Plan's indirect billing method adds variability to both forecasting and tracking

On balance, the Participants estimate that the Fee Changes will not offset revenue losses emanating from Anticipated Attrition and that the market data revenue pool under the Plan will not increase.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

Rule 608(b)(3)(i) of Regulation NMS (the ''Rule'') permits the Participants to designate a proposed plan amendment as establishing or changing fees and other charges, and to place such an amendment into effect upon filing with the Commission. As mentioned above, the Participants have made that designation. The Rule does not place any limitations on which particular fee changes qualify for immediate effectiveness. Rather, if the Commission believes that a longer comment period is appropriate for a particular filing, it may extend the comment period or abrogate the filing. Ample precedents exist for the filing of multiple or even complex fee changes to NMS Plans on an immediately effective basis over the past thirty years.[19]

Pursuant to the Rule, the Participants have designated Amendment 31 as establishing or changing fees, and have notified the industry of the proposed Fee Changes well in advance of Amendment 31's effective date. The Participants anticipate implementing the proposed Fee Changes on January 1, 2014, and intend to give further notice to data recipients and end-users of the Fee Changes.

Finally, the Participants intend to make the Fee Changes effective at the same time as they permit net reporting. The administrative decision to permit net reporting responds to requests from industry representatives on the Plan's Advisory Committee. The sooner firms are permitted to report on a net basis, the sooner the industry may enjoy the attendant benefits. As a result, the Participants believe that immediate effectiveness of the Fee Changes is warranted.

D. Development and Implementation Phases

See Item I(C) above.

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In key respects, the proposed Fee Changes and net reporting directly respond to the suggestions and

[16] Duplicate billing can occur when an individual user such as a trader uses multiple devices and/or accesses to view market data in multiple applications in an undifferentiated manner. Distributors report to the Plan administrator the number of Subscribers to which it [sic] distributes data. If a trader receives UTP Level 1 data from both a Thomson Reuters datafeed access and a firm-generated datafeed access, both the firm and Thomson Reuters are currently required to report that trader as a Subscriber, and each would have to pay for the trader's use of UTP Level 1 data.

[17] To report on a net basis, distributors must apply for and receive approval, based on their demonstration of adequate internal controls for identifying, monitoring, and reporting all internal Professional UTP Level 1 Subscribers directly. The burden will be on Vendors to demonstrate that the particular unit should be netted. The net-reporting option is described in further detail at: *http://www.nasdaqtrader.com/content/AdministrationSupport/AgreementsData/utpdatapolicies.pdf.*

[18] MISU is similar to the Plan's proposed net-reporting program except in one key respect: Vendors under the Plan bill their customers on behalf of the Plan Participants. Under the CTA and CQ Plans, the Network A and Network B administrators bill end-users directly. The CTA MISU program is described in greater detail at *www.nyxdata.com.*

[19] *See, e.g.,* Fifth Charges Amendment to the First Restatement of the CTA Plan, File No. S7–433, Release No. 34–19342, 47 FR 57369–03 (December, 23, 1982); Fourteenth Charges Amendment to the First Restatement of the CTA Plan and Fifth Charges Amendment to the original CQ Plan, File No. S7–30–91, Release No. 34–29863, 56 FR 56429–01 (November 4, 1991); Second Charges Amendment to the CTA Plan and First Charges Amendment to the CQ Plan, SR–CTA/CQ–97–2, Release No. 34–39235, 62 FR 54886–01 (October 14, 1997); OPRA Plan amendment SR–OPRA–2004–01, Release No. 34–49382, 69 FR 12377–01 (March 16, 2004); OPRA Plan amendment SR–OPRA–2007–04, Release No. 34–56950, 72 FR 71722–01 (December 18, 2007); OPRA Plan amendment SR–OPRA–2012–02, Release No. 34–66564, 77 FR 15833–01 (March 16, 2012).

requests of industry representatives and reflect the Participants' own views that it is appropriate to maintain a pricing structure that is consistent with current technology, that rationalizes administrative burdens and that promotes the use of real-time market data. The combination of the Fee Changes and net reporting would re-balance amounts that firms pay for the Plan's market data in a manner that fairly allocates market data costs among market data users.

In addition, in respect of firms that cannot take advantage of net reporting, the Participants have not significantly revised usage fees in many years. Numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research warrant this revision.

In general, the proposed Fee Changes would cause NASDAQ/UTP Plan fees to sync more closely with fees payable under the CTA, CQ and OPRA Plans. The proposed fees would compare favorably with the fees payable under those other plans and with the fees charged for market data by the largest stock exchanges around the world. As a result, the Fee Changes promote consistency in price structures among the national market system plans, as well as consistency with the preponderance of other market data providers. This would make market data fees easier to administer. It would enable datafeed recipients to compare their charges under the respective national market system plans more easily. It also would make for a more straightforward and streamlined administrative process for market data end-users, as the reporting rules and fee arrangements under the national market system plans become more homogenous.

In the Participants' view, the proposed fee schedule would allow each category of datafeed recipient and end-user to contribute an appropriate amount for their receipt and use of market data under the Plan. The proposed fee schedule would provide for an equitable allocation of dues, fees, and other charges among broker-dealers, datafeed recipients, vendors, end-users and others receiving and using market data made available under the Plans by recalibrating the fees to more closely correspond to the different benefits different categories of users derive from their different uses of the market data made available under the Plans.

The Participants propose to apply the revised fee schedule uniformly to all constituents (including members of the Participant markets and non-members). The Participants do not believe that the proposed Fee Changes introduce terms that are unreasonably discriminatory.

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

Not applicable.

G. Approval by Sponsors in Accordance With Plan

In accordance with Section IV(C)(2) of the Plan, more than two-thirds of the Participants have approved the Fee Change.

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

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

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

1. In General

The Participants took a number of factors into account in deciding to propose the Fee Changes. To begin, the Participants' market data staff communicates on an on-going basis with all sectors of the Participants' constituencies and assesses and analyzes the different broker/dealer and investor business models. The staff has expertise in the information needs of the Participants' constituents and used their experience and judgment to form recommendations regarding the Fee Changes, vetted those recommendations with constituents and revised those recommendations based on the vetting process.

Most significantly, after an initial misstep, the Participants went back and carefully listened to the recommendations of their Advisory Committee. The Plan requires the Advisory Committee to include, at a minimum, 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. Advisory Committee members attend and participate in meetings of the Participants and receive meeting materials. Members of the Advisory Committee gave valuable input that the Participants used in crafting the proposed Fee Changes. At several meetings of the Plan's Operating Committee, Advisory Committee members spoke at length about the Fee Changes, net reporting and their overall impact.

In reassessing and rebalancing market data fees as proposed in the amendments, the Participants took a number of factors into account in addition to the views of its constituents, including:

(a) Examining the impact that they expect Anticipated Attrition to have on revenues;

(b) crafting fee changes that will not have a significant impact on total revenues generated under the Plans;

(c) setting fees that compare favorably with fees that the biggest exchanges around the globe and the CT/CQ Plan and the OPRA Plan charge for similar services;

(d) setting fees that allow each category of market datafeed recipient and end-user to contribute market data revenues that the Participants believe are appropriate for that category;

(e) crafting fee changes that appropriately differentiate between constituents in today's environment (*e.g.,* recipients of a single service vs. recipients of multiple services; large firms vs. small firms; redistributors vs. end-users).

2. An Overview of the Fairness and Reasonableness of Market Data Fees and Revenues Under the Plans

a. The Fee Changes Will Have No Impact on Most Individual Investors

The vast majority of Nonprofessional Subscribers (*i.e.,* individual investors) receive market data from their brokers and vendors. The Participants impose their Nonprofessional Subscriber fees on the brokers and vendors (rather than the investors) and set those fees so low that most brokers and vendors absorb the fees, meaning that the vast majority of individual investors do not pay for market data. The Fee Changes will thus have no impact on nonprofessional investors.

b. The Fee Changes Respond to Customer Wishes

The Fee Changes are fair and reasonable because they are designed to offset net reporting, something that industry participants have requested and that industry representatives on the Plans' Advisory Committee have embraced. The Fee Changes do so in a manner that is not estimated to increase UTP Plan revenues after taking Anticipated Attrition into account. Failure of the Fee Changes to take effect would cause the Participants to eliminate the net reporting option, to the detriment of many data product customers.

c. Long-Term Trend of Rate Reduction

The existing constraints on fees for core market data under the Plans have generally succeeded in reducing market data rates over time. For example, when the effects of inflation are taken into account, the average monthly rate payable for Professional Subscriber device has consistently and dramatically fallen in real terms over the past 16 years. When inflation is taken into account, the real monthly cost of a Professional Subscriber device was $20 in 1997; $17.84 in 2002; $15.48 in 2007 and $13.98 in 2012. Put differently, had price increases kept pace with inflation, the cost of Professional usage of Level 1 data would have increased from $20 in 1997 to $21.94 in 2001; $23.94 in 2005; $27.86 in 2009; and $29.36 in 2013.[20]

d. Explosion of Data

Although the device fees have fallen after taking inflation into account, the amount of data message traffic that end-users receive by subscribing has skyrocketed, as has the speed at which the data is transmitted.

i. New Data Added to Consolidated Feeds

The Participants have continually enhanced the consolidated feeds. The enhancements provide significant value. They are critical to the industry in that they permit end-users to do such things as view new markets and implement new regulation. Below is a list of the more significant recent enhancements, including the addition of new Participants, new indicators, new sales conditions, new reason codes and dedicated test symbols.

2013—Milestones

January—Implemented January 2013 bid rate changes:
- Quotes: 227,701mps
- Trades: 38,300mps

Reconfigured UQDF, UTDF, and OMDF servers to restore network switch diversity for primary and backup services
Implemented Limit Up/Limit Down Software (no stocks eligible)
Implemented secure FTP server for SRA
Implemented UTP data feed bandwidth increase
- UQDF 256Mb—400,000 MPS
- UTDF 101 Mb—150,000 MPS
- OMDF 2 MB—2,800 MPS

February—Implemented reference price calculator/price band dissemination
Enabled test stocks for limit up/limit down
March—Implemented reference price calculator changes
Implemented software fix for rejected 'A4' quote inputs
Submitted as-of trade reports for January 3rd issue
Implemented new front end software version (fixes & enhancements)
Implemented enhanced reference price calculator module
Implemented patch for memory growth issue on one server
Implemented patch for memory growth issue on three servers
Implemented new front end software version (memory growth issue)
Implemented fix for LULD indicator value during trading pause
Changed UTP feed start of day time from 4:00am to 3:58am
April—Implemented Market Wide Circuit Breaker interface
Retired legacy Emergency Market Conditions Halt/Resume functions
Enabled limit up/limit down for 10 NASDAQ-listed tier 1 securities
Submitted additional as-of trade reports for January 3rd issue
Enabled limit up/limit down for 19 NASDAQ-listed tier 1 securities
Implemented information security recommendations for internal browser-based applications (monitoring and console)
Enabled limit up/limit down for 65 NASDAQ-listed tier 1 securities
Enabled limit up/limit down for 77 NASDAQ-listed tier 1 securities
May—Enabled limit up/limit down for 97 NASDAQ-listed tier 1 securities
Implemented reference price calculator disaster recovery handling
Changed time source for servers running reference price calculators
Resized ISG column to handle full UQDF session close recap message
Disabled ''Auto-run'' feature on all SIP servers
June—Disabled hyper-threading on servers running reference price calculators
Implemented software fix for incorrect high price calculation resulting from trade correction
Manually failed over primary UQDF5 dissemination component to its backup after market close (to service pending retransmission requests)
Updated multicast port restriction range on all SIP servers
Implemented LULD limit state release
July—Implemented July 2013 bid rate changes:
- Quotes: 194,102mps
- Trades: 36,102mps

Completed a participant connectivity request
Implemented throttling statistics collection changes
August—Enabled limit up/limit down for 50 NASDAQ-listed tier 2 securities
Extended the price band calculation and dissemination period (9:30am–3:45pm); double-wide bands calculated from 9:30am–9:45am and 3:35pm–3:45pm

2012—Milestones

February—Implemented UQDF bandwidth increase to 175 Mbps
Implemented a connectivity request for BATS and BATS–Y
April—Implemented UTDF Capacity Phase III changes on UTDF channel 1
Implemented a connectivity request for NASDAQ
May—Implemented UTDF Capacity Phase III changes on UTDF channels 2–6
October—Implemented significant UQDF, UTDF, and OMDF message format changes in preparation for the Limit Up/Limit Down and Market-Wide Circuit Breaker initiatives
Implemented support for participants' Retail Liquidity programs

2011

January—UQDF bandwidth increased to 96 Mbps, approximately 175,000 messages per second (MPS)
UTDF bandwidth increased to 33.5 Mbps, approximately 60,000 mps
May—Installed quote processing improvements for UQDF channel 1
June—Installed quote processing improvements for UQDF channel 2–6
October—Implemented UQDF Capacity Phase III changes (throughput and latency improvements)
Implemented a network-based end-to-end latency measurement solution
November—Implemented UQDF and UTDF symbol redistribution

2010

January—Updated quote and trade capacity thresholds based on capacity study
February—Modified As Of trade processing for instruments trading in a round lot of less than 100 (*e.g.* preferred stock, convertible notes)
March—Implemented dynamic throttling communication improvements.
Implemented quote Front End enhancements to reduce CPU usage and increased throughput
Retired unused participant input lines.
April—Facilitated a request from NASDAQ OMX PHLX for input connectivity.

[20] Based on COLA changes, as found at *www.ssa.gov.*

Facilitated a request from Bats-Y for input connectivity.

May—Implemented UTDF improvements to increase throughput and reduce latency.

June—Implemented single-stock circuit breaker halt reason codes.

Activated participants EDGA Exchange, Inc. and EDGX Exchange, Inc.

July—Updated quote and trade capacity thresholds based on capacity study

August—Implemented short sale trading restriction messaging.

Enhanced market center-specific non-regulatory halts to support liquidity imbalances.

Increased UTDF bandwidth to 12.5 Mbps in order to accommodate approximately 22,500 peak messages per second.

Implemented daily peak traffic rate .CSV files on SRA FTP site.

September—Implemented daily peak traffic rate spreadsheet on SRA FTP site.

Upgraded quote input servers in the primary production environment.

October—Activated BATS–Y Exchange.

Upgraded trade input servers in the primary production environment.

Upgraded participant input servers in the disaster recovery environment.

November—Implemented performance improvements in preparation for bandwidth increases in January 2011

December—Implemented ''Consolidator'' model performance improvements for UTDF.

2009

January—Expanded bandwidth for UQDF to handle 53,600 messages per second and UTDF to handle 8400 mps.

Modified quarterly statistics report to include date and time of 5 minute peak messaging

February—Implemented aberrant/erroneous trade tool to allow the SIP operator to cancel or error large quantities of trades at a participant's request.

March—Enabled dynamic throttling for quotes

Started beta phase for penalty reports.

May—Implemented a latency reduction enhancement for quotes and trades

June—Implemented SRA and ISG changes in preparation for expansion of UQDF and UTDF multicast channels.

August—Expanded UQDF and UTDF from three to six multicast channels.

Increased UQDF bandwidth to 56 Mbps in order to accommodate approximately 100,000 peak messages per second

Increased UTDF bandwidth to 8 Mbps in order to accommodate approximately 15,000 peak messages per second.

September—Implemented three new participants (EDGA, EDGX, and BYX) with test quote and trade ports.

Implemented metrics-collection software to improve performance monitoring.

October—Implemented Front End performance enhancements to reduce CPU usage

November—Facilitated requests from EDGA and EDGX for input connectivity.

December—Implemented further performance enhancements to reduce CPU usage.

Completed setup of a NASDAQ-hosted Web site for the UTP Plan Administrator: *http://www.utpplan.com/*

2008

January—Support for new stock option ''V'' Trade modifier.

February—Expanded UQDF bandwidth from 7.8 to 12.5 megabits per second (mbps) to support approximately 23,300 messages per second (mps).

March—Increased the field size for participant inbound sequence number from 7 to 8 digits to support increasing messaging rates.

April—Facilitated a request from BSX for input connectivity.

June—Implemented change to support a new Emergency Market Condition quote resume message.

July—Expanded UQDF bandwidth from 12.5 to 28.0 mbps to support approximately 48,000 mps.

UTDF bandwidth was expanded from 3.0 to 4.0 mbps to support approximately 7,200 mps.

September—Facilitated a request from BATS Exchange Inc. for input connectivity.

October—Activation of the BATS Exchange as a new participant in UQDF and UTDF

November—Implemented a participant quote throttling mechanism to protect the system against instability and high latency during periods of heavy traffic, while guaranteeing each participant full access to its projected peak rate.

December—Upgraded SQL database servers to SQL Server 2008 to enhance database performance

2007

January—Support one, two, and three character stock symbols for NASDAQ listed issuers, in addition to the currently used four- and five-character symbols.

February—Regulation NMS compliance for quotes and trades

Quotes: Replace existing NASD quote message with new message that adds a new 1 byte FINRA appendage indicator. Supports a new appendage that identifies FINRA best bid Market Participant ID (MPID) and FINRA best offer MPID.

Trades: Support new trade through exempt flag and new 4 byte sale condition field. This resulted in new message formats for long form trade reports, trade cancellations, and trade corrections.

Introduce new Prior Day As-Of Trade message to allow reporting a trade that occurred prior to the current business day or to cancel an erroneously reported trade from a previous day.

April—Facilitated a request from NSX for input connectivity.

June—Facilitated a request from NSX for input connectivity.

July—Implemented changes to allow Cash Settlement (C), Next Day (N), and Seller Sale Days Settlement (R) sale conditions for trade reports that are not exempt from the trade-through rule.

August—Facilitated a request from ISE for input connectivity.

September—Support for new Price Variation (H) and Cross (X) trade modifiers.

Dissemination of the bid tick indicator is now inhibited.

December—Enhancement to Quote Wipeout processing to improve processing times.

ii. Significant Improvements in Latency and Capacity

The Participants have made numerous investments to improve system speed and capacity, investments that are often overlooked by the industry. The Participants regularly monitor and review the performance of their SIP and make performance statistics available publicly on a quarterly basis. They make investments to upgrade technology, upgrades that enable the SIP to collect and disseminate the data ever more quickly, even as the number of quotes and trades continues to rise. The Participants will make future investments to handle the expected continued rise in message traffic, and at even faster data dissemination speeds.

The information below shows that customers are getting the quote and trade data feeds faster, as the latency of consolidated tape quote and trade feeds has improved significantly in recent years. Average quote feed latency declined from over 5 milliseconds at the end of 2009 to 1.24 milliseconds in August 2013 and average trade feed latency declined from over 6 milliseconds at the end of 2009 to 1.21 milliseconds in August 2013, as shown below. Latency is measured from the time a message received from a Participant is time-stamped by the system, to the time that processing the message is completed.

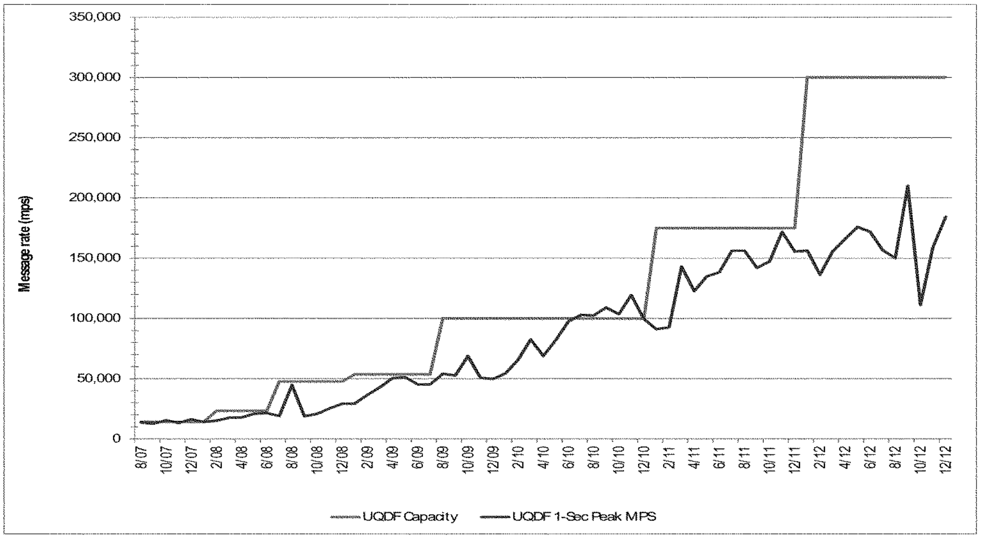
Month	Average quote latency (milliseconds)	Average trade latency (milliseconds)
Dec 2009	5.2497	6.2685
Dec 2010	4.3267	5.6796
Dec 2011	2.5378	7.8491
Dec 2012	1.6837	1.6328
Aug 2013	1.2492	1.2114

iii. Significant Improvements in System Throughput, Measured by Messages Per Second

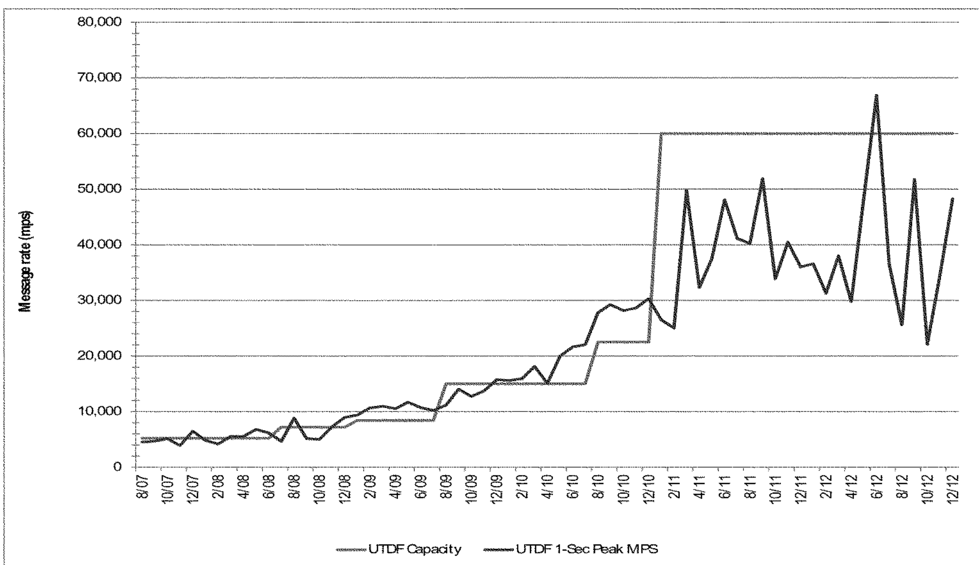
Investments in hardware and software have increased processing power and enabled the systems to handle increasing throughput levels. This is measured by peak capacity messages per second and is monitored by looking at actual peak messages per second. SIP throughput continues to increase in order to push out the increasing amounts of real-time quote and trade data.

Given the constant rise in peak messages, the SIP significantly increased system capacity. As shown below, the system could handle peak quotes per second of 10,000 in 2007 and 300,000 million in 2012, an increase of more than 3,000 percent. The capacity for trades per second increased from 4,500 in 2007 to 50,000 in 2012, an increase of more than 1,100 percent. To better manage the rise in message traffic, the Participants anticipate that capacity planning will move from measuring messages per second to measuring messages per millisecond.

UQDF 1-second peak versus capacity:



UTDF 1-second peak versus capacity:



e. Vendor Fees

Fees imposed by data vendors, whom the Commission does not regulate, account for a vast majority of the global market data fees incurred by the financial industry, according to Burton Taylor Associates, cited in a research study by Atradia.[21] In addition to charging monthly subscription fees for end-users, market data vendors may apply significant administration mark-up fees on top of exchange market data fees. These mark-ups are not regulated and there is limited transparency into how the rates are applied. These mark-ups do not result in any additional revenues for the Participants; the vendors alone profit from them.

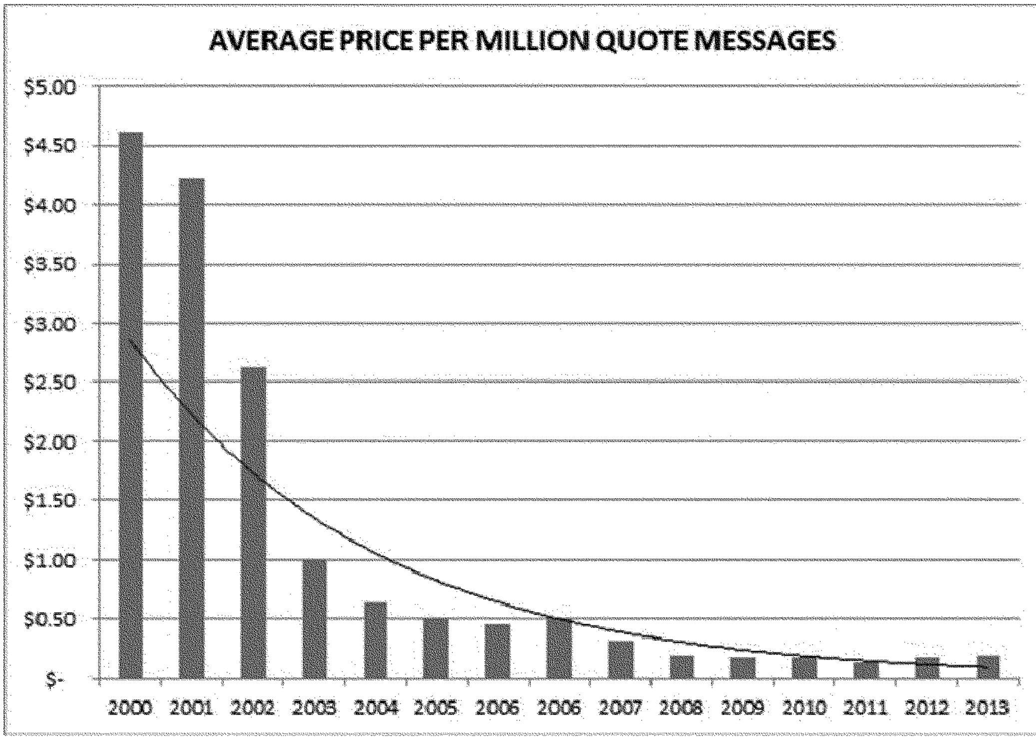
f. Declining Unit Purchase Costs for Customers

Despite consolidated tape investments in new data items, additional capacity demands and latency improvements, users' unit purchase costs for trade and quote data have declined significantly, increasing the value of the data they receive from their subscriptions. The amount of quote and trade data messages has increased significantly while fees have remained unchanged, as shown below for the 2000 to 2012 timeframe.

The average purchase cost of Plan quotes has steadily declined since 2000. During that period, the average number of quotes per day increased over 2,500 percent between 2000 and 2012, rising from 4.3 million in 2000 to 114.1 million in 2012. As a result, the average unit purchase cost per one million quote

[21] Atradia, *The Cost of Access to Real Time Pre and Post Trade Order Book Data in Europe,* August 2010 (available at *www.siia.net*).

messages for a customer incurring a monthly professional subscriber fee of $20 declined over 95 percent during this period, falling from $4.61 in 2000 to $0.17 in 2012.



The average cost of last sale transaction reports also declined over that period. For instance, in 1998, the Plan Processor received reports for 155 million trades. By 2012, those numbers had increased to 1.75 billion trades. Similarly, in 1998, the Processor received total volume of 184 billion shares, increasing to 437 billion shares in 2012. At the same time, professional subscriber fees remained constant and the introduction of a nonprofessional subscriber fee and an enterprise maximum reduced fees dramatically for whole categories of users and expanded data distribution to thousands of other users.

Of course, these calculations exclude entirely the high indirect costs of producing consolidated [sic] represented by the costs of each exchange collecting and contributing data to create the consolidated feeds. With respect to indirect costs, the Commission has previously noted that ''any attempt to calculate the precise cost of market information presents severe practical difficulties.'' [22] In commenting on the 1999 Concept Release, NYSE summarized many of the ''severe practical difficulties'' attendant to each Participant's calculation of its data production and collection costs and we incorporate that discussion here.[23] In 1997, the indirect costs of the Participants would have included the data production and collection costs of eight national securities exchanges and one national securities association. In 2013, that calculation would have to include the data production and collection costs of the 15 Participants, including 14 national securities exchanges and the Alternative Display Facility and two Trade Reporting Facilities that FINRA, the lone national securities association, maintains.

In addition to those indirect costs, the costs of administering market data distribution under the Plan have increased dramatically, as the administrator has rolled out new and enhanced tracking, data management, and invoice management systems to accommodate vendors and the industry and has enhanced its compliance-review capabilities.

3. Adequate Constraints on Fees

Constituent boards, customer control and regulatory mechanisms constrain fees for core market data now just as they have since Congress established the fair-and-reasonable standard in 1975. Under the Plan, NASDAQ, the listing market, typically takes the lead on pricing and administrative proposals, vetting new proposals with the other Participants, various datafeed and end-users, and trade and industry groups, and making modifications which improve or reevaluate the original concept. Proposals are then taken to each Participant for approval. However, significant market data user and regulatory requirements constrain the Participant's ability to simply impose price changes, as demonstrated by the failed attempts earlier this year.

The governing body of each Participant consists of representatives of constituent firms and a large quotient of independent directors. The Participants' constituent board members have the ultimate say on whether the UTP Plan Operating Committee should submit fee proposals to the Commission and whether the costs of operating the markets and the costs of the market data function are fairly allocated among market data users. That is, the users of market data and non-industry

[22] *See* SEC 1999 Concept Release on ''Regulation of Market Information Fees and Revenues'' (the ''1999 Concept Release'') located at *http://www.sec.gov/rules/concept/34-42208.htm.*

[23] *See* footnote 11 of letter from James E. Buck, Senior Vice President and Secretary, NYSE, April 10, 2000, located at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

representatives who sit on Participant boards get to determine whether to support market data fee proposals. They also get to determine how the various types of data users should pay their fair share and they make decisions about funding technical infrastructure investments needed to receive, process and safe-store the orders, quotations and trade reports that give rise to the data. This cost allocation by consensus is buttressed by Commission review and is superior to cost-based rate-making.

Indeed, in recent decades, Congress and federal agencies, including the Commission, have increasingly moved away from intrusive, cost-based ratemaking in favor of more market-oriented approaches to pricing. For example, it was the intent of Congress in creating the national market system to rely on competitive forces, where possible, to set the price of market information.[24] Consistent with this intent, an Advisory Committee appointed by the Commission in 2001 to review market data issues concluded that ''the 'public utility' cost-based ratemaking approach is resource-intensive, involves arbitrary judgments on appropriate costs, and creates distortive economic incentives.'' [25] In response, and consistent with the purposes of the Exchange Act, the Commission has increasingly permitted competitive forces to determine the prices of market data fees.[26] This conclusion mirrors the experience of other federal agencies that have come to reject cost-of-service ratemaking as a cumbersome and impractical process that stifled, rather than fostered, competition and innovation.[27]

Market forces are plainly adequate to constrain the prices for market data proposed herein by the Plan and its Participants. Constituent Board members are the Participants' market data customers. When a critical mass of them voices a point of view, they can direct the Participants how to act. This is exactly what motivated the Participants to propose the Fee Changes. The Commission's process, including public comment as appropriate and when permitted by the statutory language, then acts as an additional constraint on pricing. Also, developments in technology make possible another important constraint on market data prices for core data: There is nothing to prevent one or more vendors, broker-dealers or other entities from gathering prices and quotes across all Participants and creating a consolidated data stream that would compete with the Plans' data streams. The technology to consolidate multiple, disparate data streams is readily available, and multiple markets have already introduced products that compete with core data.

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

No Change.

B. Reporting Requirements

No Change.

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

No Change.

D. Manner of Consolidation

No Change.

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

No Change.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

No Change.

G. Terms of Access to Transaction Reports

See Item I(A).

H. Identification of Marketplace of Execution

No Change.

III. Solicitation of Comments

The Commission seeks general comments on Amendment No. 31. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number S7–24–89 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–24–89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of NASDAQ. 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 December 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–28970 Filed 12–3–13; 8:45 am]

BILLING CODE 8011–01–P

[24] *See* Conference Report, H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 92 (1975), at 92 (''It is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[25] Report of the Advisory Committee on Market Information: A Blueprint for Responsible Change, at § VII.D.3 (SEC Sept. 14, 2001); *see also* Stephen G. Breyer, *Analyzing Regulatory Failure: Mismatches, Less Restrictive Alternatives, and Reforms,* 92 Harv. L. Rev. 547, 565 (1979) (''[I]nsofar as one advocates price regulation . . . as a 'cure' for market failure, one must believe the market is working very badly before advocating regulation as a cure. Given the inability of regulation to reproduce the competitive market's price signals, only severe market failure would make the regulatory game worth the candle.'').

[26] *See generally NetCoalition* v. *SEC,* 615 F.3d 525, 533–35 (D.C. Cir. 2010).

[27] *See, e.g., Elizabethtown Gas Co.* v. *FERC,* 10 F.3d 866, 870 (D.C. Cir. 1993).

[28] 17 CFR 200.30–3(a)(27).