

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2021-56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2021-56 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93618; File No. S7-24-89]

Joint Industry Plan; Notice of Filing of the Fifty-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

November 19, 2021.

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 5, 2021,³ certain participants in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("UTP Plan" or "Plan") filed with the Securities and Exchange Commission ("Commission") a proposal to amend the UTP Plan.⁴ The amendment represents the Fifty-Second Amendment to the Plan ("Amendment"). Under the Amendment, the Participants propose to amend the Plan to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's Market Data Infrastructure Rules ("MDI Rules").⁵ The Participants have submitted a separate amendment to implement the non-fee-related aspects of the MDI Rules.

The proposed Amendment has been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.⁶ The Commission is publishing this

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ See Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

⁴ The amendment was approved and executed by more than the required two-thirds of the self-regulatory organizations ("SROs") that are participants of the UTP Plan. The participants that approved and executed the amendment (the "Participants") are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, 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.. The other SROs that are participants in the UTP Plan are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc.. See *infra* Section I. G.

⁵ Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7-03-20) ("MDI Rules Release").

⁶ 17 CFR 242.608(b)(2).

notice to solicit comments from interested persons on the proposed Amendment. Set forth in Sections I and II, which were prepared and submitted to the Commission by the Participants, is the statement of the purpose and summary of the Amendment, along with information pursuant to Rules 608(a) and 601(a) under the Act. A copy of the Plan marked to show the proposed Amendment is Attachment A to this notice.

I. Rule 608(a)

A. Purpose of the Amendments

On December 9, 2020, the Commission adopted amendments to Regulation NMS. The effective date of these final rules was June 8, 2021. As specified in the MDI Rules Release, the Participants must submit updated fees regarding the receipt and use of the expanded content of consolidated market data by November 5, 2021.⁷ Consistent with that requirement, the Participants are submitting the above-captioned amendments to the UTP Plan to propose such fees.⁸

The Participants are proposing a fee structure for the following three categories of data, which collectively comprise the amended definition of core data, as that term is defined in amended Rule 600(b)(21) of Regulation NMS:⁹

(1) Level 1 Service, which the Participants propose would include Top of Book Quotations, Last Sale Price Information, and odd-lot information (as defined in amended Rule 600(b)(59)). Plan fees to subscribers currently are for Top of Book Quotations and Last Sale Price Information, as well as what is now defined as administrative data (as defined in amended Rule 600(b)(2)), regulatory data (as defined in amended Rule 600(b)(78)), and self-regulatory

⁷ MDI Rules Release at 18699.

⁸ As the Commission is aware, some of the SROs (the "Petitioners") have challenged the MDI Rules Release in the D.C. Circuit. Certain of the Petitioners have joined in this submission, including the statement that the Plan amendments comply with the MDI Rules Release, solely to satisfy the requirements of the MDI Rules Release and Rule 608. Nothing in this submission should be construed as abandoning any arguments asserted in the D.C. Circuit, as an agreement by Petitioners with any analysis or conclusions set forth in the MDI Rules Release, or as a concession by Petitioners regarding the legality of the MDI Rules Release. Petitioners reserve all rights in connection with their pending challenge of the MDI Rules Release, including *inter alia*, the right to withdraw the proposed amendment or assert that any action relating to the proposed amendment has been rendered null and void, depending on the outcome of the pending challenge. Petitioners further reserve all rights with respect to this submission, including *inter alia*, the right to assert legal challenges regarding the Commission's disposition of this submission.

⁹ 17 CFR 242.600(b)(26) ("Rule 600").

¹⁶ 17 CFR 200.30-3(a)(12).

organization-specific program data (as defined in amended Rule 600(b)(85)). The Participants propose that Level 1 Service would continue to include all information that subscribers receive for current fees and add odd-lot information;

(2) Depth of book data (as defined in amended Rule 600(b)(26)); and

(3) Auction information (as defined in amended Rule 600(b)(5)).¹⁰

Professional and Nonprofessional Fee Structure

For each of the three categories of data described above, the Participants are proposing a Professional Subscriber Charge and a Nonprofessional Subscriber Charge.

With respect to Level 1 Service, the Participants are not proposing to change the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the UTP Plan. Access to odd-lot information would be made available to Level 1 Service Professional and Nonprofessional Subscribers at no additional charge.

With respect to depth of book data, Professional Subscribers would pay \$99.00 per device per month and Nonprofessional Subscribers would pay \$4.00 per subscriber per device per month. The Participants are not proposing per-quote packet charges or enterprise rates for either Professional Subscribers or Nonprofessional Subscribers use of depth of book data at this time.

Finally, with respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay \$10.00 per device per month.

Non-Display Use Fees

The Participants are proposing Non-Display Use Fees relating to the three categories of data described above: (1) Level 1 Service; (2) depth of book data; and (3) auction information.

With respect to Level 1 Service, the Participants are not proposing to change the Non-Display Use fees currently set forth in the UTP Plan. Access to odd-lot information would be made available to Level 1 Service subscribers at no additional charge.

¹⁰The Participants propose to price subsets of data that comprise core data separately so that data subscriber users have flexibility in how much consolidated market data content they wish to purchase. For example, the Participants understand that certain data subscribers may not wish to add depth of book data or auction information, or may want to add only depth of book information, but not auction information. Accordingly, Participants are proposing to price subsets of data to provide flexibility to data subscribers. However, the Participants expect that Competing Consolidators would be purchase all core data.

With respect to depth of book data, Subscribers would pay Non-Display Use Fees of \$12,477.00 per month for each category of Non-Display Use.

With respect to auction information, Subscribers would pay Non-Display Use fees of \$1,248.00 per month for each category of Non-Display Use. As is the case today, Subscribers would be charged for each category of use of depth of book data and auction information.

Access Fees

Finally, the Participants are proposing Access Fees regarding the use of the three categories of data: (1) Level 1 Service; (2) depth of book data; and (3) auction information.

With respect to Level 1 Service, the Participants are not proposing to change the Access Fees currently set forth in the UTP Plan. Access to odd-lot information would be made available to Level 1 Service subscribers at no additional charge.

With respect to depth of book data, Subscribers would pay a monthly Access Fee of \$9,850.00

With respect to auction information, Subscribers would pay a monthly Access Fee of \$985.00 per Network.

Clarifications Related to Expanded Content

In addition to the above fees, the Participants propose adding clarifying language regarding the applicability of various fees given the availability of the expanded market data content.

First, the Participants propose to clarify that the Per Query Fee is not applicable to the expanded content, and only applies to the receipt and use of Level 1 Service. Under the current Price List, the Per Query Fee serves as an alternative fee schedule to the normally applied Professional and Nonprofessional Subscriber Charges. The proposed changes are designed to clarify that Per Query Fee is only available with respect to the use of Level 1 Service, and the fees for the use of depth of book data and auction information must be determined pursuant to the Professional and Nonprofessional fees described above.

Second, the Participants propose to clarify that Level 1 Service would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data. This proposed amendment would use terms defined in amended Rule 600(b) to reflect both current data made available to data subscribers and the additional odd-lot information that

would be included at no additional charge.

Third, the Participants are proposing to clarify that the existing Redistribution Fees would be applicable to all three categories of core data, including any subset thereof. Currently, Redistribution Fees are charged to any entity that makes last sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Participants propose to amend this description to make it applicable to core data, as that term is defined in amended Rule 600(b)(21). The Participants are not proposing to change the fee level for Redistribution Fees themselves.

Fourth, the Participants are proposing that the existing Redistribution Fees would be applicable to Competing Consolidators. In the MDI Rules approval order, the SEC stated that “[t]he Commission believes imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model.”¹¹ The Commission then compared Competing Consolidators to Self-Aggregators and noted that Self-Aggregators would not be subject to redistribution fees. The Participants believe that the comparison between Competing Consolidators and Self-Aggregators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory. The Participants also do not believe that the Commission’s comparison is consistent with current long-standing practice that redistribution fees are charged to any entity that distributes data externally.¹² By definition, a Self-Aggregator would not be distributing data externally and therefore would not be subject to such

¹¹ MDI Rules Release at 18685.

¹² The current exclusive securities information processor (“SIP”) is not charged a Redistribution Fee. However, unlike Competing Consolidators, the processor has been retained by the UTP Plan to serve as an exclusive SIP, is subject to oversight by both the UTP Plan and the Commission, and neither pays for the data nor engages with data subscriber customers. By contrast, under the Competing Consolidator model, the UTP Plan would have no role in either oversight of or determining which entities choose to be a Competing Consolidator, a Competing Consolidator would need to purchase consolidated market data just as any other vendor would, and Competing Consolidators would be responsible for competing for data subscriber clients. Accordingly, Competing Consolidators would be more akin to vendors than the current exclusive SIPs. The Participants note that if any entity that is currently an exclusive SIP chooses to register as a Competing Consolidator, such entity would be subject to the Redistribution Fee.

fees, which is consistent with current practice that a Subscriber to consolidated data that only uses data for internal use is not charged a Redistribution Fee.

Instead, the more appropriate comparison would be between Competing Consolidators and downstream vendors, both of which would be selling consolidated market data directly to market data subscribers. Vendors are and still would be subject to Redistribution Fees when redistributing data to market data subscribers. It would be unreasonably discriminatory for Competing Consolidators, which would be competing with downstream market data vendors for the same data subscriber customers, to not be charged a Redistribution Fee for exactly the same activity. Consequently, the Participants believe that it would be unreasonably discriminatory and impose a burden on competition to not charge Competing Consolidators the Redistribution Fee.¹³

Third, the UTP Plan fee schedule currently permits the redistribution of UTP Level 1 Service on a delayed basis for \$250.00 per month. The Participants propose adding a statement that depth of book data and auction information may not be redistributed on a delayed basis.

Finally, the Participants are proposing to make non-substantive changes to language in the fee schedules to take into account the expanded content. For example, the Participants propose updating various fee descriptions to either add or remove a reference to UTP Level 1 Service. Additionally, while FINRA OTC Data will not be provided to Competing Consolidators, it is still being provided to the UTP Processor for inclusion in the consolidated market data made available by the UTP Processor. The Participants propose adding clarifying language to make clear that UTP Level 1 Service obtained from the Processor will include FINRA OTC Data but will not include Odd-lot information.

B. Governing or Constituent Documents

Not applicable.

¹³ The Participants believe it would be more appropriate to compare Competing Consolidators and Self-Aggregators with respect to the fees charged for receipt and use of market data from the Participants and address the fees for the usage of consolidated market data based on their actual usage, which is consistent with the statutory requirements of the Act that the data be provided on terms that are not unreasonably discriminatory. For instance, Participants have proposed to charge a data access fee to Competing Consolidators that would be the same fee to Self-Aggregators.

C. Implementation of Amendments

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

D. Development and Implementation Phases

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendments comply with the requirements of the MDI Rules, which have been approved by the Commission.

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

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Section IV.C.2 of the UTP Plan provides that “[t]he affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to the establishment of new fees, the deletion of existing fees, or increases or reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities.”

The Participants have executed this Amendment and represent not less than two-thirds of all of the parties to the UTP Plan. That satisfies the UTP Plan’s Participant-approval requirements.¹⁴

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

Not applicable.

I. Terms and Conditions of Access

Not applicable.

¹⁴ FINRA, IEX, LTSE, MIA, and MEMX have not joined in the decision to approve the filing of the proposed amendment, and Nasdaq BX is also withholding its vote at the time. Additionally, the Advisory Committee requested that the following statement be inserted into the filing: The Advisory Committee has actively participated in the rate setting process with the SROs and has provided the SROs with opinion and guidance on rate setting appropriate to the interests of consumers throughout the process. The Advisors collectively believe that SIP data content fees should be universally lower to align with the un-coupling of SIP data content from the SIP exclusive processor, a function to be performed by Competing Consolidators. The Advisors believe that while their input was important in the process, the core principle of fees being fair and reasonable was not achieved.

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

Fees established for consolidated market data must be fair and reasonable and not unreasonably discriminatory.¹⁵ The Commission expressed that the Operating Committee of the UTP Plan “should continue to have an important role in the operation, development, and regulation of the national market system for the collection, consolidation, and dissemination of consolidated market data.”¹⁶ The Commission further stated that “the fees for data content underlying consolidated market data, as now defined, are subject to the national market system process that has been established,” and that the “Operating Committee(s) have plenty of experience in developing fees for SIP data.”¹⁷

The Operating Committee is bringing this experience to bear to determine the fees for the new core data elements and is proposing fees that are fair and reasonable and not unreasonably discriminatory. The Commission has stated that one way to demonstrate that fees for consolidated market data are fair and reasonable is to show that they are reasonably related to costs. However, the Exchange Act does not require a showing of costs, and historically, the UTP Plan has not demonstrated that their fees are fair and reasonable on the basis of cost data.

Moreover, under the decentralized Competing Consolidator model, the Operating Committee has no knowledge of any of the costs associated with consolidated market data. Under the current exclusive SIP model, the Operating Committee (1) specifies the technology that each Participant must use to provide the SIPs with data, and (2) contracts directly with a SIP to collect, consolidate, and disseminate consolidated market data, and therefore has knowledge of a subset of costs associated with collecting and consolidating market data. By contrast, under the decentralized Competing Consolidator model, the UTP Plan no longer has a role in either specifying the technology associated with exchanges providing data or contracting with a SIP. Rather, as specified in amended Rule 603(b), each national securities exchange will be responsible for determining the methods of access to and format of data necessary to generate consolidated market data. Moreover, Competing Consolidators will be responsible for connecting to the

¹⁵ 15 U.S.C. 78o(c)(1)(C) and (D) and Rule 603(a)(1) and (2).

¹⁶ MDI Rules Release at 18682.

¹⁷ MDI Rules Release at 18683.

exchanges to obtain data directly from each exchange, without any involvement of the Operating Committee. Nor does the Operating Committee have access to information about how each exchange would generate the data that they each would be required to disseminate under amended Rule 603(b). Accordingly, under the decentralized Competing Consolidator model, the Operating Committee does not have access to any information about the cost of providing consolidated market data.

In the absence of cost information being available to the Operating Committee, the Participants believe instead that fees for consolidated market data are fair and reasonable and not unreasonably discriminatory if they are related to the value of the data to

subscribers. The Participants believe that the value of depth of book data and auction information is well-established, as this content has been available to market participants directly from the exchanges for years, and in some cases, decades, at prices constrained by direct and platform competition. Exchanges have filed fees for this data pursuant to the standards specified in Section 6(b)(5) of the Act.

To determine the value of depth of book data, the Participants considered a number of methodologies to determine the appropriate level to set fees for the expanded data content that are based on the current fees charged for depth of book data by exchanges that have chosen to charge for their data. In particular, the Participants reviewed (1) an ISO Trade-Based Model¹⁸; (2) a

Depth to Top-Of-Book Ratio Model (“Depth-to-TOB Model”); and (3) a Message-Based Model.¹⁹ Ultimately, the Participants selected a Depth-to-TOB Model to determine the appropriate fees for the expanded data content.

In particular, the Participants reviewed the depth to top-of-book ratios of Professional device rates on Nasdaq (Nasdaq Basic/Nasdaq TotalView), Cboe (Cboe Full Depth) and NYSE (BQT/NYSE Integrated). In addition, IEX has recently proposed data access fees for its TOPS and DEEP data feeds, which are not proposed to be charged on a per individual basis. The Participants also reviewed the ratio proposed by IEX between its proposed fees for real-time top of book and depth feeds (TOPS/DEEP), as set forth below:

Exchange	Product	Prop Level 1	Depth	Ratio (%)
Nasdaq	Nasdaq Basic/Nasdaq Total View	\$26	\$76	292
Cboe	Cboe ONE Summary/Cboe Full Depth	10	100	1000
NYSE	BQT/NYSE Integrated	18	70	389
IEX	TOPS/DEEP	500	2,500	500

The Participants noted that utilizing the ratios calculated for Nasdaq, NYSE, and IEX resulted in an average ratio of 3.94x and resulted in market data fees the Participants believe are fair and reasonable.

The Participants also conducted alternative calculations by including a broader range of products or those products offering more robust depth fees. These alternative calculations resulted in ratios greater than 3.94x and were not selected by the Participants. The Participants believe that the 3.94x ratio represents the difference in value between top-of-book and five levels of depth that would be required to be included in consolidated market data under amended Rule 603(b). Because the alternate methodologies, which focused on only the top five levels of depth, resulted in higher ratios, the Participants believe that the more conservative 3.94x ratio would be a fair and reasonable ratio between the proposed fees for depth of book data required to be included in the consolidated market data and the current fees for the existing Top of Book Quotation information.

The Participants then applied the 3.94x ratio to the current fees charged for consolidated market data, as follows:

- The Participants applied the 3.94x ratio to the current fees charged to

Professional Subscribers taking all three Networks (\$75.00). This resulted in the total fee level for depth of book data for Professional Subscribers equaling \$296.00 (*i.e.*, \$75.00 × 3.94 = \$295.50, rounded to \$296.00). This fee was then split evenly among the three Networks resulting in a proposed Professional Subscriber fee of \$99.00 per Network.

- The Participants applied the 3.94x ratio to the current fees charged for Nonprofessional Subscribers taking all three Networks (\$3.00). This resulted in the total fee level for depth of book data for Nonprofessional Subscribers equaling \$12.00 (*i.e.*, \$3.00 × 3.94 = \$11.82, rounded to \$12.00). This fee was then split evenly among the three Networks, resulting in a proposed Nonprofessional Subscriber fee of \$4.00 per Network.

- The Participants applied the 3.94x ratio to the current fees charged for Non-Display Use for all three Networks (\$9,500.00). This resulted in the total fee level for depth of book data for Non-Display Use equaling \$37,430.00 (*i.e.*, \$9,500.00 × 3.94 = \$37,430.00). This fee was then split evenly among the three Networks, resulting in a proposed Non-Display Use Fee of \$12,477.00 per Network (including rounding).

- The Participants applied the 3.94x ratio to the current fees charged for direct Data Access for all three

Networks (\$7,500.00). This resulted in the total fee level for depth of book data for Non-Display Use equaling \$29,550.00 (*i.e.*, \$7,500.00 × 3.94 = \$29,550.00). This fee was then split evenly among the three Networks (including Network C), resulting in a proposed Non-Display Use Fee of \$9,850.00 per Network.

With respect to the fees for auction information, the Participants looked to the number of trades that occur during the auction process as compared to the trading day, and determined that roughly 10% of the trading volume is concentrated in auctions. Consequently, the Participants believed that charging a fee that was 10% of the fee charged for depth of book data was an appropriate proxy for determining the value of auction information. As a result, the Participants proposed a \$10.00 fee per Network for auction information, which the Participants believe is fair and reasonable and not unreasonably discriminatory.

With respect to the fees for Level 1 Service, the Participants believe that it is fair and reasonable and not unreasonably discriminatory to include access to odd-lot information at no additional charge to the current fees, which the Participants are not proposing to change.

¹⁸ The ISO-Based model analyzed the number of intermarket sweep orders executing through the NBBO, looking at the number of ISOs executed in

the first five levels of depth as compared to all ISOs executed.

¹⁹ The Message-based model looked at the total number of orders displayable in the first five levels of depth as compared to all displayable orders.

Finally, as detailed above, the Participants are proposing to specify that the existing Redistribution Fees would be applicable to the amended core data, and that such fees would also be applicable to Competing Consolidators. In the MDI Rules Release, the SEC stated that “[t]he Commission believes imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model.” The Commission then compared Competing Consolidators to Self-Aggregators and noted that Self-Aggregators would not be subject to redistribution fees. The Participants believe that the comparison between Competing Consolidators and Self-Aggregators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory. Instead, the more appropriate comparison would be between Competing Consolidators and downstream vendors, both of which would be competing to sell consolidated market data directly to the same market data subscribers. Vendors are and still will be subject to Redistribution Fees when redistributing data to market data subscribers. It would be incongruent and impose a burden on competition for Competing Consolidators to not be charged a redistribution fee for exactly the same activity. Consequently, the Participants believe that it would be unreasonably discriminatory to not charge Competing Consolidators the redistribution fee. To the contrary, based on the long-standing policy that Redistribution Fees are charged to any entity that distributes data externally, the Participants believe it would be a significant departure from established policy, a burden on competition, and unreasonably discriminatory *not* to charge a Redistribution Fee to Competing Consolidators.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Reporting Requirements

Not applicable.

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

Not applicable.

C. Manner of Consolidation

Not applicable.

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

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks comments on the Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendment is consistent with the Act and the rules and regulations thereunder applicable to national market system plans. 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 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the proposed Amendment that are filed with the Commission, and all written communications relating to the proposed Amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE,

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00p.m. Copies of the filing will also be available for website viewing and printing at the principal office of the Plan.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number S7–24–89 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Assistant Secretary.

Attachment A—Proposed Changes to the UTP Plan

Attachment A

Proposed Changes to the UTP Plan

(Additions are *italicized*; Deletions are in [brackets].)

Exhibit 2

Fees for UTP Services

(a) [UTP Level 1 Service] *Professional Services.*

The charge for each interrogation device receiving UTP Level 1 Service is \$24.00 per month. This Service includes the following data:

- (1) Inside bid/ask quotations calculated for securities listed in The Nasdaq Stock Market;
- (2) last sale information on Nasdaq-listed securities;
- (3) *Odd-lot information; and*
- (4) *Administrative data, regulatory data, and self-regulatory organization-specific program data.*

UTP Level 1 Service *obtained from the Processor* [also] includes FINRA OTC Data *but will not include Odd-lot information.*

The charge for each interrogation device receiving depth of book data is \$99.00 per month. The charge for each interrogation device receiving auction information is \$10.00 per month.

Vendors with employees that are [UTP Level 1] Professional Subscribers may opt to join the “Multiple Instance, Single User” (“MISU”) Program. The MISU Program allows such Vendors to pay a single device fee for an individual employee’s use of [UTP Level 1 Service] *data* when the individual employee receives [UTP Level 1 Service] *data* on

²⁰ 17 CFR 200.30–3(a)(85).

multiple devices. The MISU Program permits a single device fee for an individual on multiple devices regardless of whether the individual employee uses an internally-controlled devices or vendor-controlled terminals.

To join the MISU Program, Vendors must be party to a vendor agreement, submit a MISU application form, and a sample MISU Report to demonstrate that the Vendor can comply with the reporting requirements of the MISU Program. Additionally, Vendors must demonstrate adequate internal controls for entitlements, monitoring, and usage reporting requirements.

Vendors must submit a MISU Report in a format and include the details requested by the UTP Administrator by the 20th day of the month for which they are requesting credit. Failure to submit a MISU Report by the deadline will result in credit being forfeited for that particular month.

(b) Non-Professional Services.

(1) The charge for distribution of UTP Level 1 Service to a nonprofessional subscriber shall be \$1.00 per interrogation device per month.

(2) *The charge for distribution of depth of book data to a non-professional subscriber shall be \$4 per interrogation device per month.*

(3) *The charge for distribution of auction information to a non-professional subscriber shall be \$10 per interrogation device per month.*

[(2)](4) A “non-professional” is a natural person who is neither:

(A) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association or any commodities or futures contract market or association;

(B) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor

(C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(c) Automated Voice Response Service Fee.

The monthly charge for distribution of UTP Level 1 Service through automated voice response services shall be \$21.25 for each voice port.

(d) Per Query Fee:

The charge for distribution of UTP Level 1 Service through a per query system shall be \$.0075 per query. *The*

Per Query Fee is not available for depth of book data and auction information.

(e) Nonprofessional Subscriber Enterprise Cap

An entity that is registered as a broker/dealer under the Securities Exchange Act of 1934 is not required to pay more than the “Enterprise Maximum” for any month for each entitlement system. 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 under paragraphs (b)(1) and (d) of this Exhibit 2.

For calendar year 2016, the monthly Enterprise Maximum is \$648,000 per entitlement system. For each subsequent calendar year, the Participants may, by the affirmative vote of not less than two-thirds of all of the then voting members of the Operating Committee, determine to increase the monthly Enterprise Maximum; provided, however, that no such annual increase shall exceed four percent of the then current Enterprise Maximum amount.

(f) Cable Television Ticker Fee.

The monthly charge for distribution of UTP Level 1 Service through a cable television distribution system shall be as set forth below:

First 10 million Subscriber Households—\$2.00 per 1,000 households

Next 10 million Subscriber Households—\$1.00 per 1,000 households

For Subsequent Subscriber Households—\$0.50 per 1,000 households

(g) Data Access Charges.¹

The monthly fee for direct access to UTP Level 1 real-time data feeds shall be \$2,500 for direct access and \$500 for indirect access.

The monthly fee for access to depth of book data shall be \$9,850. The monthly fee for access to auction information shall be \$985.

(h) Redistribution Charge

The charge for redistributing real-time [UTP Level 1 Service] *core data, or any subset thereof*, is \$1,000 per month. The charge for redistributing delayed UTP Level 1 Service is \$250 per month. *Depth of book data and auction information may not be redistributed on a delayed basis.* The charge applies to any entity that makes [UTP Level 1 Service] data available to any other entity or to any person other than its employees, irrespective of the means of

transmission or access. *The charge applies to Competing Consolidators.*

(i) Non-Display Use Fees

The monthly charge for Non-Display Use of UTP Level 1 Service is \$3,500 for each of three types of Non-Display Use. The charge entitles the data recipient to use both quotation information and last sale information.

The monthly charge for Non-Display Use of depth of book data is \$12,477 for each of three types of Non-Display Use. The monthly charge for Non-Display Use of auction information is \$1,248 for each of three types of Non-Display Use.

Non-Display Use refers to accessing, processing or consuming data, whether received via direct and/or redistributor data feeds, for a purpose other than (a) in support of the datafeed recipient’s display or (b) for the purpose of further internally or externally redistributing the data. Further redistribution of the data includes, but is not limited to, the transportation or dissemination to another server, location or device or the aggregation of data with other data sources. Non-Display Use fees do not apply to the use of the data in Non-Display to create derived data and use the derived data for the purposes of solely displaying the derived data, but the data may be fee liable under the regular fee schedule.

The Non-Display Use fees apply separately for each use type and a single organization may be liable for multiple Non-Display Uses.

The Participants recognize three types of Non-Display Uses as follows:

(a) The Non-Display Use fee for Electronic Trading Systems applies when a datafeed recipient makes a Non-Display Use of data in an electronic trading system, whether the system trades on the datafeed recipient’s own behalf or on behalf of its customers. This fee includes, but is not limited to, use of data in any trading platform(s), such as exchanges, alternative trading systems (“ATS’s”), broker crossing networks, broker crossing systems not filed as ATS’s, dark pools, multilateral trading facilities, and systematic internalization systems.

An organization that uses data in electronic trading systems must count each platform that uses data on a non-display basis. For example, an organization that uses quotation information for the purposes of operating an ATS and also for operating a broker crossing system not registered as an ATS would be required to pay two Electronic Trading System fees.

(b) Non-Display Enterprise Licenses:

(i) The Non-Display Use fee for Internal Use applies when a datafeed recipient’s Non-Display Use is on its

¹The data recipient is responsible for the telecommunications facilities necessary to access data.

own behalf (other than for purposes of an electronic trading system).

(ii) The Non-Display Use fee for Internal Use applies when a datafeed recipient's Non-Display Use is on behalf of its customers (other than for purposes of an electronic trading system).

The two types of Non-Display Enterprise Licenses include, but are not limited to, use of data for automated order or quote generation and/or order pegging, price referencing for algorithmic trading, price referencing for smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance or portfolio valuation.

(j) Annual Administrative Fees.

The annual administrative fee to be paid by distributor for access to UTP Level 1 Service shall be as set forth below:

Delayed distributor—\$250

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93627; File No. SR-IEX-2021-16]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Definition of a Retail Order for the Retail Price Improvement Program

November 19, 2021.

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 November 12, 2021, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. 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

Pursuant to the provisions of Section 19(b)(1) under the Act,³ and Rule 19b-4 thereunder,⁴ the Exchange is filing with the Commission a proposed rule change to modify the definition of a

Retail order set forth in IEX Rule 11.190(b)(15) to encourage the submission of more Retail orders. The Exchange has designated this rule change as “non-controversial” under Section 19(b)(3)(A) of the Act⁵ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁶

The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, 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, the self-regulatory organization 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. The self-regulatory organization 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

The Exchange proposes to modify the definition of a Retail order⁷ set forth in IEX Rule 11.190(b)(15) for the benefit of retail investors. Specifically, IEX is proposing to revert a recent change to IEX Rule 11.190(b)(15), so that Retail orders can once again be submitted on behalf of all retail customers without the requirements that the retail customer submits no more than 390 orders per day on average (the “390-order threshold”). The Exchange proposes to make this change to offer the benefits of IEX's Retail Price Improvement Program (“Retail Program”) to as many retail investors as possible.

Background

In 2019 the Commission approved the Retail Program,⁸ which is designed to provide retail investors with meaningful price improvement opportunities through trading at the Midpoint Price⁹

or better.¹⁰ The Exchange launched the Retail Program on October 1, 2019.¹¹

Under IEX's Retail Program, Members¹² that qualify as Retail Member Organizations (“RMOs”) ¹³ are eligible to submit Retail orders¹⁴ to the Exchange. Any Member is able to provide price improvement to Retail orders through orders priced to execute at the Midpoint Price or better, including Retail Liquidity Provider (“RLP”) orders¹⁵ that are only eligible to execute against a Retail order at the Midpoint Price and execute in price-time priority with other orders resting on the Order Book priced to trade at the Midpoint Price.

On July 13, 2021, the Commission approved an IEX rule change proposal that revised its Retail Program (the “Retail Program Update Filing”).¹⁶ The Retail Program Update Filing was designed to further support and enhance the ability of non-professional retail investors to obtain meaningful price improvement by incentivizing market participants to compete to provide such price improvement.¹⁷ Specifically, the

“NBBO” means the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

¹⁰ On March 1, 2021, IEX filed an immediately effective rule change proposal to provide that, in addition to executing at the Midpoint Price, a Retail order can execute against a displayed unprotected odd lot order that is resting on the Order Book at a price more aggressive than the Midpoint Price (*i.e.*, above the Midpoint Price in the case of an odd lot buy order and below the Midpoint Price in the case of an odd lot sell order). Executing against such an odd lot order thus provides more price improvement to the Retail order than executing at the Midpoint Price. *See* Securities Exchange Act Release No. 91324 (March 15, 2021), 86 FR 15015 (March 19, 2021) (SR-IEX-2021-03).

¹¹ *See* Trading Alert #2019-026, available at <https://iextrading.com/alerts/#/82>.

¹² *See* IEX Rule 1.160(s).

¹³ *See* IEX Rule 11.232(a)(1).

¹⁴ A Retail order is currently defined as an order submitted by an RMO and designated with a “Retail order” modifier. A Retail order must be an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, and must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology (a “retail customer”). An order from a retail customer can include orders submitted on behalf of accounts that are held in a corporate legal form that have been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. A Retail order may only be submitted on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). *See* IEX Rule 11.190(b)(15).

¹⁵ *See* IEX Rule 11.190(b)(14).

¹⁶ *See* Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (approving SR-IEX-2021-06).

¹⁷ *See supra* note 17.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4.

⁷ *See* IEX Rule 11.190(b)(15).

⁸ *See* Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR-IEX-2019-05) (SEC order approving IEX's Retail Program).

⁹ The term “Midpoint Price” means the midpoint of the NBBO. *See* IEX Rule 1.160(t). The term