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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87910; File No. S7-24-89]

Joint Industry Plan; Notice of Filing of the Forty-Seventh 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  
January 8, 2020.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 of Regulation National Market System (“NMS”) thereunder,<sup>2</sup> notice is hereby given that on November 25, 2019,<sup>3</sup> the Participants<sup>4</sup> 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

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<sup>1</sup> 15 U.S.C 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> See Letter from Robert Books, Chairman, Operating Committee, Nasdaq/UTP Plan, to Vanessa Countryman, Secretary, Commission, dated November 19, 2019 (“Transmittal Letter”).

<sup>4</sup> The Participants are the national securities association and national securities exchanges that submit trades and quotes to the Plan and include: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors’ Exchange LLC, Long-Term Stock Exchange, Inc., Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (each a “Participant” and collectively, the “Participants”). Participants also are members of the Plan’s Operating Committees. Other parties include the “Processor,” who is charged with collecting, processing and preparing for distribution or publication all Plan information. The “Administrator” is charged with administering the Plan to include data feed approval, customer communications, contract management, and related functions. “Advisory Committee members” are individuals who represent particular types of financial services firms or actors in the securities market, and who were selected by Plan participants to be on the Advisory Committee. A list of the Processor, Administrator, and Advisory Committee members is available at <http://www.utpplan.com/governance>.

(“Nasdaq/UTP Plan” or “Plan”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Nasdaq/UTP Plan.<sup>5</sup> The amendment represents the Forty-Seventh Amendment to the Plan (“Amendment”). As described in the Amendment, the Participants propose to adopt a confidentiality policy to provide guidelines for the Operating Committee and the Advisory Committee of the Plan, and all subcommittees thereof, regarding the confidentiality of any data or information generated, accessed, or transmitted to the Operating Committee, as well as discussions occurring at a meeting of the Operating Committee or any subcommittee. According to the Participants, the confidentiality policy is designed broadly (i) to protect against any potential misuse of confidential information, which includes, but is not limited to, protecting confidential information obtained or generated by the Administrator and Processor in connection with the operation of the Plan as well as (ii) to allow the Operating Committee to disclose confidential information to the Advisory Committee to obtain its input without concern that such confidential information may be shared beyond the Advisory Committee. The Participants believe that the proposed Amendment will allow for more sharing of information with the Advisory Committee regarding the operation of the Plan and elicit more input by the Advisory Committee on Plan matters that might otherwise be deemed confidential.<sup>6</sup>

The proposed Amendment has been filed by the Participants pursuant to Rule 608(b)(2)

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<sup>5</sup> The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for 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).

<sup>6</sup> See Transmittal Letter at 1.

under Regulation NMS.<sup>7</sup> The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendment.

The Commission notes that, contemporaneously with the issuance of this notice, it has issued a notice of proposed order (“Governance Notice”)<sup>8</sup> soliciting public comment on a proposed order that would direct the national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, “SROs”) to act jointly in developing and filing with the Commission a proposed new single national market system plan, which will replace the existing national market system plans that govern the public dissemination of real-time, consolidated equity market data for national market system stocks (“Equity Data Plans”). The Commission stated in the Governance Notice its view that, among other concerns,

[i]n the operation of the Equity Data Plans, Participants and Participant representatives have been privy to confidential and proprietary information of substantial commercial or competitive value, including, among other things, information about core data usage, the [securities information processors’ or] SIPs’ customer lists, financial information, and subscriber audit results. However, the terms of the Equity Data Plans do not address commercial use of confidential or proprietary information by the Participants.<sup>9</sup>

The Governance Notice solicits public comment on a proposed order that would direct the SROs to include provisions in the New Data Plan (as defined in the Governance Notice) addressing several issues arising from the current governance structure of the Plan, and discusses the Commission’s view that the new data plan should include provisions regarding the treatment of

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<sup>7</sup> 17 CFR 242.608(b)(2).

<sup>8</sup> See Securities Exchange Act Release No. 87906 (January 8, 2020).

<sup>9</sup> Id. at A-67 (footnotes omitted).

confidential information.

In addition, contemporaneously with the publication of notice of the Amendment set forth below, the Commission also is publishing a separate proposed amendment from the Plan concerning a conflicts of interest policy.

I. Text of the Amendment

Set forth below is the entirety of the Amendment submission that the Participants filed with the Commission, which includes a statement of the purpose and summary of the Amendment, along with the information required by Rules 608(a) and 601(a) under the Act.<sup>10</sup>

A. Purpose of the Amendment

1. Background

Under the provisions of the Plan, the Advisory Committee has the right to attend all meetings of the Operating Committee and receive any information concerning Plan matters distributed to the Operating Committee. The Advisory Committee also can attend meetings of most subcommittees. The Operating Committee, however, may meet in Executive Session without the Advisory Committee to discuss items that require confidential treatment, as determined by majority vote of the Operating Committee. Last year, the Participants adopted an Executive Session Policy, which provides a specified list of topics that are appropriate for Executive Session. Those topics include:

- fees that require discussion of confidential financial information;
- subscriber audit findings;
- discussions that require the disclosure of Material Non-Public Information;

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<sup>10</sup> See 17 CFR 242.608(a)(4) and (a)(5).

- financial reports containing confidential financial information;
- the portion of a discussion or evaluation of administrator and processor performance that includes confidential, non-public information;
- contract negotiations, awards, and revocations that contain non-public information;
- Advisory Committee member selection;
- litigation matters; and
- confidential, non-public discussions with the SEC.

The Participants currently use Executive Sessions sparingly to discuss confidential information. When used, the Executive Session usually lasts less than thirty minutes and is used to discuss a limited set of topics, often consisting of a single, discrete topic. Although the Executive Session is sparingly used, the Participants are now seeking additional ways to include the Advisory Committee in more discussions and to share additional confidential information with the Advisory Committee.

Therefore, the Participants are proposing a confidentiality policy to allow the Operating Committee to share confidential information with the Advisory Committee without concern that such information would be more broadly disseminated. By sharing information that would in the ordinary course be considered appropriate for confidential treatment, the Participants believe that the Advisory Committee will be able to provide more informed advice and recommendations with respect to the operation and governance of the Plan. Further, the confidentiality policy is designed to protect against any potential misuse of confidential information by: (1) restricting the use and dissemination of customer-related information; (2) requiring the Administrator and Processor to maintain confidential

information policies that will be reviewed by the Operating Committee at least every two years; (3) permitting disclosure of confidential information by a representative of a Participant to other employees or agents of the Participant or its affiliates only as needed to perform that representative's function on behalf of the Participant; and (4) setting clear procedures regarding the treatment of various forms of confidential information.

The Participants discussed this proposal extensively with the Advisory Committee and this proposal reflects input and comments from the members of the Advisory Committee.

## 2. Proposed Confidentiality Policy

In an effort to expand the information that the Operating Committee may provide to the Advisory Committee, and also to provide guidelines about what information can and cannot be shared outside the meetings of the Operating Committee, the Participants are proposing to adopt a confidentiality policy.

The proposed confidentiality policy would apply to all representatives of the Participants, Pending Participants, the UTP Administrator and Processor, and the Advisory Committee. Additionally, it would apply to agents of the Operating Committee, including, but not limited to, attorneys, advisors, accountants, contractors or subcontractors ("Agents"), as well as any third parties invited to attend meetings of the Operating Committee or Plan subcommittees. These persons are collectively defined in the confidentiality policy as "Covered Persons."<sup>11</sup>

The proposed confidentiality policy creates three categories of confidential information: (1) Restricted Information; (2) Highly Confidential Information; and (3) Confidential Information. Restricted Information is defined as (i) highly sensitive customer-

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<sup>11</sup> Covered Persons would not include staff of the Commission.

specific financial information, (ii) customer-specific audit information, (iii) other customer financial information, and (iv) Personal Identifiable Information. Highly Confidential Information is defined as (i) any data or information shared in an Executive Session or that would otherwise qualify for confidential treatment pursuant to the Plan's Executive Session Policy;<sup>12</sup> and (ii) any other highly sensitive Participant-specific, customer-specific, individual-specific, or otherwise sensitive information relating to the Operating Committee, Participants, or customers that is not otherwise Restricted Information. Highly Confidential Information includes: a Participant's contract negotiations with the Processor or Administrator; personnel matters; information concerning the intellectual property of Participants or customers; and any document subject to the Attorney-Client Privilege or Work Product Doctrine. Finally, Confidential Information is defined as (i) any non-public data or information designated as Confidential by a majority vote of the Operating Committee; (ii) any document generated by a Participant or Advisor and designated by that Participant or Advisor as Confidential; (iii) the minutes of the Operating Committee or any subcommittee thereof unless approved by the Operating Committee for release to the public; and (iv) the individual views and statements of Covered Persons and SEC staff disclosed during a meeting of the Operating Committee or any subcommittees thereunder.

The confidentiality policy outlines the procedures with respect to identifying documents as Restricted, Highly Confidential, or Confidential as well as the procedures

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<sup>12</sup> Although Highly Confidential Information includes data or information shared in an Executive Session, the Participants plan on including more information in General Session rather than Executive Session. The proposed confidentiality policy allows the Participants to share more sensitive information with the Advisory Committee without concerns that such information would be more broadly disseminated. Therefore, the Participants intend to share additional information, previously designated for Executive Session, with the Advisory Committee, including confidential financial information.

regarding how to treat documents and information in each category. With respect to general procedures, the confidentiality policy places the obligation on the Administrator and the Processor to be the custodian of all documents and to maintain the classification of such documents. The Administrator will ensure that all documents are properly labeled with the appropriate category. The Administrator may, under delegated authority, designate documents as Restricted, Highly Confidential, or Confidential, which will be determinative unless altered by a majority vote of the Operating Committee. Finally, all contracts between the Operating Committee and its Agents will require the Operating Committee information to be treated as Confidential Information that may not be disclosed to third parties, except as necessary to effect the terms of the contract or as required by law.

### 3. Procedures Governing Restricted Information

With respect to Restricted Information, the proposed confidentiality policy provides that such information will be kept in confidence by the Administrator and Processor and will not be disclosed to the Operating Committee or any subcommittee thereof, or during Executive Session, or the Advisory Committee, except in the following circumstances:

1. If an Administrator determines that it is appropriate to share a customer's financial information with the Operating Committee or a subcommittee thereof, the Administrator will first anonymize the information by redacting the customer's name and any other information that may lead to the identification of the customer.
2. The Administrator may disclose the identity of a customer that is the subject of the Restricted Information in Executive Session only if the Administrator determines in good faith that it is necessary to disclose the



customer's identity in order to obtain input or feedback from the Operating Committee or a subcommittee thereof about a matter of importance to the Plan. In such an event, the Administrator will change the designation of the information at issue from "Restricted Information" to "Highly Confidential Information."

3. The Administrator may share Restricted Information related to any willful, reckless, or grossly negligent conduct by a customer discovered by the Administrator with the UTP Administrator or with the SEC, as appropriate, upon majority vote of the Operating Committee in Executive Session, provided that, in any report by the Administrator during Executive Session related to such disclosure, the Administrator anonymizes the information related to the wrongdoing by removing the names of the party or parties involved, as well as any other information that may lead to the identification of such party or parties.

The Participants believe that the procedures governing Restricted Information will ensure the protection of customer identities and customer-related information, and such information will be disclosed only when necessary to conduct Plan-related business.

4. Procedures Governing Highly Confidential Information

With respect to Highly Confidential Information, the proposed confidentiality policy provides that such information may be disclosed only in Executive Session of the Operating Committee or to the Legal Subcommittee. Highly Confidential Information may also be disclosed to SEC staff, unless it is protected by the Attorney-Client Privilege or the Work Product Doctrine. Any disclosure of Highly Confidential Information to SEC staff will be accompanied by a FOIA Confidential Treatment Request. The confidentiality policy does not

permit any other disclosure of Highly Confidential Information.

In addition, a Covered Person that is a representative of a Participant may disclose Highly Confidential Information to other employees or agents of the Participant or its affiliates only as needed for such Covered Person to perform his or her function on behalf of the Participant, as reasonably determined by the Covered Person. A copy of the confidentiality policy will be made available to recipients of such information who are employees or agents of a Participant or its affiliates that are not Covered Persons, who will be required to abide by the confidentiality policy.

Further, because of the heightened concerns regarding the disclosure of Highly Confidential Information, in the event a Covered Person is determined by a majority vote of the Operating Committee to have disclosed Highly Confidential Information, the Operating Committee will determine the appropriate remedy for the breach based on the facts and circumstances of the event. For the representatives of a Participant, appropriate remedies include a letter of complaint submitted to the SEC, which may be made public by the Operating Committee. For a member of the Advisory Committee, appropriate remedies include removal of that member from the Advisory Committee.

#### 5. Procedures Governing Confidential Information

Under the proposed confidentiality policy, Confidential Information may be disclosed to the Operating Committee, any subcommittee thereof, and the Advisory Committee. A Covered Person may not disclose Confidential Information to any individual that is not either a Covered Person or a member of the SEC staff, except with authorization of the Operating Committee, or as may be otherwise required by law. The Operating Committee or a subcommittee thereof may authorize the disclosure of Confidential Information by an

affirmative vote of the number of members that represent a majority of the total number of members of the Operating Committee or subcommittee. However, with respect to Confidential Information that is generated by a Participant or member of the Advisory Committee, the Operating Committee may authorize its disclosure only with the consent of such Participant or member of the Advisory Committee.

In order to elicit industry feedback, members of the Advisory Committee may be authorized by the Operating Committee to disclose particular Confidential Information to enable them to consult with third-party industry representatives or technical experts, provided that the member of the Advisory Committee takes any steps requested by the Operating Committee to prevent further dissemination of that Confidential Information, including providing the individuals consulted with a copy of the confidentiality policy and requesting that person to maintain the confidentiality of such information in a manner consistent with the confidentiality policy.

A Covered Person that is a representative of a Participant may disclose Confidential Information to other employees or agents of the Participant or its affiliates only as needed for such Covered Person to perform his or her function on behalf of the Participant, as reasonably determined by the Covered Person. A copy of the confidentiality policy will be made available to recipients of such information who are employees or agents of a Participant or its affiliates that are not Covered Persons, who will be required to abide by the confidentiality policy.

A Covered Person may disclose his or her own individual views and statements that may otherwise be considered Confidential Information without obtaining authorization of the Operating Committee provided that the Covered Person is not disclosing the views or

statements of any other Covered Person or Participant that are considered Confidential Information.

Finally, a Covered Person that discloses Confidential Information without the authorization of the Operating Committee will report such disclosure to the Chair of the Operating Committee. Such unauthorized disclosure of Confidential Information will be recorded in the minutes of the meeting of the Operating Committee and will contain: (a) the name(s) of the person(s) who disclosed such Confidential Information, and (b) a description of the Confidential Information disclosed. The name(s) of the person(s) who disclosed such Confidential Information will also be recorded in any publicly available summaries of Operating Committee minutes.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

Each of the Participants has approved the amendment in accordance with Section IV.C of the UTP Plan. The Participants also received and incorporated feedback from the Advisory Committee in preparing the confidentiality policy.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Participants believe that the proposed confidentiality policy will provide enhanced disclosure to the Advisory Committee regarding matters that the Participants consider

confidential information. Currently, the Plan allows information to be discussed in Executive Session when the Operating Committee determines that an item of Plan business requires confidential treatment. Despite the confidential nature of the information, the Participants believe that inclusion of the Advisory Committee in certain discussions that involve confidential information would be beneficial for the operation and governance of the Plan.

The confidentiality policy allows such information to be more freely shared with the Advisory Committee without concerns that the confidential information will be disseminated more broadly. Additionally, the confidentiality policy provides guidance to the representatives of Participants on how to treat confidential information that they obtained through the course of participating on the Operating Committee, thereby reducing confusion among the representatives of the Participants. Finally, by requiring Agents of the Operating Committee to adhere to the confidentiality policy, the confidentiality policy will ensure that such Agents will be subject to the same requirements as the Operating Committee when handling confidential information.

Additionally, the proposed confidentiality policy will protect customer-specific information in the possession of the Administrator and Processor. The procedures surrounding the use of Restricted Information will help to ensure that the dissemination of Restricted Information is limited to instances when necessary for the operation of the Plan. Further, the confidentiality policy requires the Administrator and Processor to establish written confidential information policies that provide for the protection of information under their control. Therefore, the confidentiality policy is designed to protect confidential information obtained or generated by the Administrator and Processor in connection with the operation of the Plan.

Finally, as noted above, the proposal was vetted with the Advisory Committee to include its input into a policy that would enhance the amount of information available to the Advisory Committee.

F. Written Understanding or Agreement relating to Interpretation of, or Participating in Plan

Not applicable.

G. Approval by Sponsors in Accordance with Plan

Section IV.C.1 of the UTP Plan require the Participants to unanimously approve the amendment proposed herein. They have so approved it.

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

Not applicable.

I. Terms and Conditions of Access

Not applicable.

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

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Regulation NMS Rule 601(a)

A. Equity Securities for which Transaction Reports Shall be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

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

Not applicable.

D. Manner of Consolidation

Not applicable.

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

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. 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 comments concerning the foregoing, including whether the Amendment is consistent with the Act and the rules thereunder. Among other things, the Commission asks commenters to consider whether the Amendment to the current Plan addresses the concerns outlined in the Governance Notice or whether they should be further enhanced regarding the identification and protection of confidential information. Accordingly, the Commission requests comments on matters including, but not limited to, the following:

1. Do commenters believe that Participants involved in the operation or governance of each Plan have, by consequence of their position, access to information of substantial

commercial and competitive value? If so, do commenters believe that certain of that information, including customer-specific financial information, customer-specific audit information, personally identifiable information, and information concerning the intellectual property of Participants or customers, is highly sensitive to such a degree that its possession and use should be more tightly controlled? Please explain. For example, should the Amendment require logs and written attestations when a Covered Person shares Highly Confidential Information with other employees or agents of the Participant or its affiliates? Do commenters believe the Amendment should specifically address commercial use of information that is of substantial competitive value?

2. Do commenters believe that Participants' representatives should be subject to restrictions and/or information barriers as part of the confidentiality policy to address their direct or indirect involvement in the development or sale of proprietary data products to SIP customers? For example, do commenters believe that Participants' access to a list of the Processor's customers as well as information on those customers' data usage and fees paid to the Plan has competitive implications? Do commenters believe that the Plan should require recusal in certain circumstances (e.g., during Executive Sessions or Operating Committee meetings) because the potential for misuse of competitively sensitive confidential information is too great? If so, what should those circumstances be? Do commenters believe that any Participant or Advisory Committee member that is directly involved in the management, sale, or development of similar proprietary market data products that may be sold to customers of the SIPs should have access to any customer information from the SIPs? Do commenters believe that Operating Committee members, as well as the Administrator, Processor, and auditor should be prohibited, unless otherwise



required by law, from sharing confidential information with individuals that are not involved with the operation of the Plan and individuals employed by or affiliated with the same entity if such individuals are involved in the management, sale, or development of proprietary data products that are offered separately to a substantially similar customer base, i.e., customers or potential customer of the SIPs? Would these concerns also be present for the sale of related data products that are supplemental to SIP data?

3. Do commenters believe that the Plan should require all Participants and other Covered Persons to establish, maintain, and enforce policies and procedures to safeguard confidential and proprietary information received via their participation in the Plan and to prevent its misuse by such Participants or entities controlling, controlled by, or under common control with such Participants? If so, do commenters believe the proposed Amendment sufficiently achieves that goal?

4. Do commenters believe the proposed guidelines and procedures for identifying and categorizing types of confidential information, including for providing increasing degrees of protection for more sensitive types of confidential information, provide sufficient detail and a sufficiently comprehensive process and procedures to identify, classify, and subsequently protect confidential information? Or do commenters believe that further efforts are necessary to identify, categorize, and protect confidential information and/or information of substantial competitive or commercial value? Do commenters believe that a need may arise for information or data that are not initially categorized as confidential to be categorized as such at a later point in time and, if so, what should the process be for doing so? For example, should the Operating Committee be able to classify or de-classify material as appropriate based on a majority vote?

5. Do commenters believe that the Administrator and Processor should be solely responsible for classifying material according to the proposed standards? Or do commenters believe the decisions of the Administrator and Processor should be subject to review, for example upon the request of a member of the Operating Committee? Do commenters believe that potential conflicts of interest should preclude the Administrator and Processor from solely and independently making classification determinations in those circumstances when entities with which they are directly or indirectly affiliated separately offer proprietary data products to a substantially similar customer base, i.e., customers or potential customers of the SIPs?
6. Do commenters believe that certain information or data generated, accessed, transmitted to, or discussed by the Operating Committee, such as information regarding contract negotiations with a potential new Processor, Administrator, auditor, or other third party service provider, should be designated as confidential and, if so, what level of confidentiality should such information be afforded?
7. Do commenters believe that information shared in Executive Sessions should be classified as Highly Confidential simply by virtue of it having been shared in an Executive Session, or should such information be classified based solely on its content and competitive sensitivity?
8. Do commenters believe that information that is not classified at some level of confidentiality should be considered public and may be shared freely outside of the Operating Committee? What specific information do commenters believe should be considered public and shared outside of the Operating Committee?
9. Do commenters believe that the proposed guidelines and procedures setting forth the

circumstances in which disclosure of confidential information may be authorized are sufficiently clear and comprehensive? Do commenters believe that the proposed provisions allowing Participants to disclose confidential and highly confidential information to other employees or agents of the Participant or its affiliates as needed as they reasonably determine is appropriate? Or do commenters believe that, if a Participant is either employed by or affiliated with an entity that offers proprietary data products that are offered for sale to a substantially similar customer base (i.e., customer or potential customers of the SIPs), that Participant should be required to develop policies and procedures that govern the sharing of confidential information? Do commenters believe such policies and procedures should be reviewed by the Operating Committee and Advisors and made publicly available via the Plan's website? Do commenters believe that the potential conflicts of interest involved and the difficulty of mitigating the potential harm and potential burdens on competition are so great that Participants should be explicitly prohibited from disclosing restricted and confidential information at all or only if authorized to do so on a case-by-case basis from the Operating Committee, unless such disclosure is otherwise required by law? If disclosure is required by law, should the Covered Person be required to first notify the Operating Committee (e.g., to provide the Operating Committee with an opportunity to redact information if permitted by applicable law or to dispute the requirement to provide in its entirety)?

10. Do commenters believe that certain confidential information may become less sensitive if it is anonymized and aggregated? If so, do commenters believe that certain types of restricted or highly confidential information could be anonymized and aggregated to the point where it could be classified as public? What methodology for anonymizing

confidential information would commenters suggest, and should the methodology be standardized such that the Administrator, Processor, and auditor all follow a consistent practice for anonymizing such information? Do commenters believe that certain information is so sensitive, whether anonymized or not, that it should never be shared outside of the Operating Committee or outside of the Administrator?

11. Do commenters believe that the scope of the proposed Amendment is sufficiently comprehensive to cover all parties that might have access to confidential information, or should the scope be broadened to apply to additional classes of persons? For example, should outsourced service providers (including, but not limited to, firms and persons that provide audit services, accounting services, or legal services to the Plan, the Administrator, or the Processor) be subject to additional restrictions, particularly if they are directly or indirectly affiliated with a Participant, the Administrator, the Processor, or any entity that offers separately proprietary data products to a substantially similar customer base, i.e., customers or potential customers of the SIPs? If so, should the Plan explicitly preclude itself from engaging with an Administrator, Processor, auditor, or any agents or third parties thereof, unless the entity establishes, maintains, and enforces policies and procedures to safeguard confidential and proprietary information and to prevent its direct or indirect misuse? If so, should the Operating Committee review those policies and procedures and/or should they be made public (i.e., provided on the Plan's website)? For example, if the Administrator oversees a Plan's audit function (directly or through an agent or third party) but also is affiliated with an entity that sells proprietary data products to SIP customers, do commenters believe that potential conflicts of interest should preclude the Administrator from independently determining its own confidential information policies as

they apply to the audit function? Or, should such policies be subject to review and approval by the Operating Committee, and be posted publicly, to help ensure their adequacy and completeness?

12. Do commenters believe that Advisory Committee members need access to sensitive information of substantial commercial and competitive value in order to perform their duties? Do commenters believe that the Advisory Committee members need access to underlying information relied on by the Participants when making decisions on funding of and improvements for the SIPs?

13. Do commenters believe the proposed remedy in the event that a Covered Person discloses “Highly Confidential Information” in a manner inconsistent with the proposed policy is sufficient, or should any other consequences of such disclosure be provided?

14. Similarly, do commenters believe the Amendment would sufficiently deter unauthorized disclosure of “Confidential Information” by a Covered Person without authorization by the Operating Committee? Do commenters believe appropriate remedies for Participants and Advisors should differ, or should potential remedies for Participants that disclose confidential information also include the possibility of removal of that Participant from the Operating Committee?

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-24-89 on the subject line.

Paper comments:

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

All submissions should refer to File Number S7-24-89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the proposed 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 also will 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 [insert date 21 days from publication in the Federal Register].

By the Commission.

Vanessa A. Countryman,  
Secretary.

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