



Joint Industry Plan; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data

January 11, 2021.

I. Introduction

On August 11, 2020, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Investors Exchange LLC, Long Term Stock Exchange, Inc., MEMX LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX LLC, Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., NYSE National, Inc., and Financial Industry Regulatory Authority, Inc. (“FINRA”) (collectively, the “SROs” or “Participants”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed new single national market system plan governing the public dissemination of real-time consolidated equity market data for national market system (“NMS”) stocks (the “CT Plan”). The proposed CT Plan was published for comment in the Federal Register on October 13, 2020.¹

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,² to determine whether to disapprove the CT Plan or to approve the plan with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

¹ See Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 34-90096 (Oct. 6, 2020), 85 FR 64565 (Oct. 13, 2020) (“Notice”). Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-757/4-757.htm>.

² 17 CFR 242.608(b)(2)(i).

II. Background

The SROs filed the CT Plan pursuant to a Commission order directing the SROs to act jointly in developing and filing with the Commission a proposed new single national market system plan to replace the three existing national market system plans that govern the public dissemination of real-time, consolidated equity market data for NMS stocks (the “Governance Order”).³

In issuing the Governance Order, the Commission stated that developments in technology and changes in the equities markets have heightened an inherent conflict of interest between the Participants’ collective responsibilities in overseeing the existing equity data plans⁴ and their individual interests in maximizing the viability of proprietary data products that they sell to market participants.⁵ This conflict of interest, the Commission stated, combined with the concentration of voting power in the existing equity data plans among a few large “exchange groups”—multiple exchanges operating under one corporate umbrella—has contributed to significant concerns regarding whether the consolidated feeds meet the purposes for them set out by Congress and by the Commission in adopting the national market system.⁶ The Commission therefore found it in the public interest to require the Participants to jointly develop and file with

³ Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 34-88827 (May 6, 2020), 85 FR 28702 (May 13, 2020).

⁴ The three equity data plans that currently govern the collection, consolidation, processing, and dissemination of SIP data are (1) the Consolidated Tape Association Plan (“CTA Plan”), (2) the Consolidated Quotation Plan (“CQ Plan”), and (3) 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”). See Governance Order, supra note 3, 85 FR at 28703 & n.34.

⁵ See Governance Order, supra note 3, 85 FR at 28702.

⁶ See id. The Commission also stated in the Governance Order that the continued existence of three separate NMS plans for equity market data creates inefficiencies and unnecessarily burdens ongoing improvements in the provision of equity market data to market participants. See id.

the Commission a single new consolidated data plan with specified terms and conditions regarding the governance of the new plan.⁷

The full text of the proposed CT Plan appears in Attachment A to the Notice.⁸

III. Proceedings to Determine Whether to Approve or Disapprove the Proposed CT Plan

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁹ and Rules 700 and 701 of the Commission's Rules of Practice,¹⁰ to determine whether to disapprove the CT Plan or to approve the plan with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed CT Plan to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission "shall approve a national market system plan ..., with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan ... is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act."¹¹ Rule 608(b)(2) further provides that the Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.¹² In the Notice, the Commission sought comment on elements of the proposed CT Plan that bear on the Commission's analysis of whether the plan should be

⁷ See Governance Order, supra note 3, 85 FR at 28729–31.

⁸ See Notice, supra note 1, 85 FR 64574–95.

⁹ 17 CFR 242.608.

¹⁰ 17 CFR 201.700; 17 CFR 201.701.

¹¹ See 17 CFR 242.608(b)(2).

¹² See id.

approved, disapproved, or approved with modifications.¹³ In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,¹⁴ the Commission is providing notice of the grounds for disapproval under consideration:

- Whether the proposed CT Plan is consistent with the Governance Order;
- Whether, consistent with Rule 608 of Regulation NMS, the proposed CT Plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act¹⁵;
- Whether modifications to the proposed CT Plan, or conditions to its approval, would be required to make the proposed plan necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act¹⁶;
- Whether the proposed CT Plan is consistent with Congress's finding, in Section 11A(1)(C)(iii) of the Act, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure "the availability to brokers, dealers, and investors or information with respect to quotations for and transactions in securities"¹⁷;

¹³ See Notice, supra note 1, 85 FR at 64568–74.

¹⁴ 17 CFR 242.608(b)(2)(i). See also Commission Rule of Practice 700(b)(2), 17 CFR 201.700(b)(2).

¹⁵ See 17 CFR 242.608(b)(2).

¹⁶ See 17 CFR 242.608(b)(2).

¹⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

- Whether, consistent with the purposes of Section 11A(c)(1)(B) of the Act,¹⁸ the proposed CT Plan is appropriately structured, and whether its provisions are appropriately drafted, to support the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS securities, and the fairness and usefulness of the form and content of such information;
- Whether the proposed CT Plan effectively addresses the inherent conflict of interest between the Participants' collective responsibilities in overseeing the existing equity data plans and their individual interests in maximizing the viability of proprietary data products that they sell to market participants, as well as the concentration of voting power in the existing equity data plans among a few large exchange groups; and
- Whether the provisions of the proposed CT Plan that were not mandated by the Governance Order are consistent with the Act and the rules and regulations issued thereunder that are applicable to NMS plans.¹⁹

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised above.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposals. In particular, the Commission invites the written views of interested persons concerning whether the proposals are consistent with Section 11A or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral

¹⁸ See 15 U.S.C. 78k-1(c)(1)(B).

¹⁹ See Rule 700(b)(3)(ii) of the Commission's Rules of Practice. 17 CFR 200.700(b)(3)(ii).

presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,²⁰ any request for an opportunity to make an oral presentation.²¹

Interested persons are invited to submit written data, views, and arguments regarding whether the proposals should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. 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. Please include File Number 4-757 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 4-757. 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 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

²⁰ 17 CFR 242.608(b)(2)(i).

²¹ Rule 700(c)(ii) of the Commission's Rules of Practice provides that "[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views." 17 CFR 201.700(c)(ii).

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 Participants' principal offices. 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 4-757 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

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²² 17 CFR 200.30-3(a)(12).