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February 28, 2020

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

Re: Petition for Clarification and Extension of Comment Period

Notice of Proposed 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. 87906  
(January 8, 2020), 85 FR 2164 (January 14, 2020) (File No. 4-757) (the “January  
Proposal”)

Notice of Proposed Rule on Market Data Infrastructure, Securities Exchange Act  
Release No. 88216 (February 14, 2020) (File No. S7-03-20) (the “February  
Proposal”)

Dear Ms. Countryman:

The Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”) writes to voice its concern that Nasdaq and other members of the public cannot submit meaningful comments on either of the above-captioned proposals unless the Securities and Exchange Commission (the “Commission”) issues a clarifying statement that resolves conflicts between the proposals and explains how the Commission expects the proposals to interact. In addition, given the size and complexity of the proposals, Nasdaq believes that an extension of the comment period for both proposals following the issuance of such an explanation should be granted.

Under the January Proposal, the Commission would issue an Order to require the Participants in current equity data plans<sup>1</sup> to propose a single, new equity data plan (the “New

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<sup>1</sup> The three equity data plans are the Consolidated Tape Association Plan, the Consolidated Quotation Plan, and the Nasdaq UTP Plan. The Participants in the Equity Data Plans are Cboe BYX Exchange, Inc. (“BYX”), Cboe BZX Exchange, Inc. (“BZX”), Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”), Cboe Exchange, Inc. (“Cboe”), Investors Exchange LLC (“IEX”), Long Term Stock Exchange, Inc. (“LTSE”), Nasdaq BX, Inc. (“BX”), Nasdaq ISE, LLC (“ISE”), Nasdaq PHLX LLC (“PHLX”), Nasdaq Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), NYSE Chicago, Inc. (“NYSE Chicago”), NYSE National, Inc. (“NYSE National”), and Financial Industry Regulatory Authority, Inc. (“FINRA”) (each a “Participant” or a “Self-Regulatory Organization” (“SRO”) and, collectively, the “Participants” or “the SROs”).

Consolidated Data Plan” or the “Plan”) with certain features to be mandated by the Commission. While Nasdaq had intended to voice support for some aspects of the January Proposal as originally proposed, we are troubled by the Commission’s subsequent release of an overlapping, and, in certain respects, inconsistent notice of proposed rulemaking on consolidated data less than a month later. The February Proposal would radically change the purposes and powers of national market system plans and the nature of consolidated data, while re-opening the scope of Regulation NMS by changing the operation of rules pertaining to quotation display, locked and crossed markets, trade-throughs of displayed orders, disclosures of market performance, and other matters that are key to the proper functioning of the national market system. We do not believe that we exaggerate by stating that the Commission is proposing Regulation NMS 2.0 under the guise of a proposal on market data.

We note the following significant unexplained inconsistencies between the two proposals:

- The January Proposal would create a single consolidator for equity market data, while the February Proposal would replace a single-consolidator system with a system of multiple, competing consolidators.
- The January Proposal advocates changes in the governance of the New Consolidated Data Plan because, the Commission theorizes, the changes would lead to the operation of a single, exclusive consolidator in multiple, “distributed” locations and an expansion of the categories of data consolidated under the New Consolidated Data Plan. The February Proposal, instead, contains no explicit requirement for distributed data dissemination by any consolidator and replaces the concept of plan-driven, voluntary consideration of categories of data with government-mandated depth-of-book and auction data as “core” data.
- The January Proposal’s changes in governance would be followed, under the February Proposal, by extensive changes in the scope of authority vested in the operating committee of the New Consolidated Data Plan. Whereas the January Proposal would require the Plan’s operating committee to retain a processor and a non-SRO administrator to manage the consolidation of all equity data, the February Proposal would apparently nullify, or at least undermine, the authority of the New Consolidated Data Plan to continue to act as a data consolidator, but would vest the operating committee with unprecedented new authority to regulate SRO fees far beyond what is included in the consolidated feed operated by the New Consolidated Data Plan.
- The January Proposal does not directly address market structure, but the February Proposal would, as noted above, significantly impact substantive provisions of Regulation NMS. There is, however, no analysis of how these market structure changes may impact aspects of the January Proposal, such as the mandate to create a single SIP.

In light of these inconsistencies, Nasdaq is not able to discern the vision for the national market system that the Commission is proposing, and we suspect that others share our confusion

and concern. Indeed, the issuance of the February Proposal midway through the comment period for the January Proposal, and without a complete and reasoned explanation of how the two proposals are intended to interact, undermines the value of public comments on the January Proposal to a considerable extent.<sup>2</sup> Accordingly, we question whether the Commission has satisfied its obligations under the Administrative Procedure Act<sup>3</sup> (the “APA”) to seek public comment in a manner that would not render its adoption arbitrary and capricious.

Even viewed in isolation, the expansive nature of the February Proposal warrants an extended comment period to ensure that commenters have an adequate opportunity to digest its details and form views. Just in terms of sheer volume, the February Proposal is, by our count, 80% longer than the SEC’s initial proposal to adopt Regulation NMS. The proposal asks for comment on almost three hundred discrete topics, with many questions containing embedded sub-questions. Moreover, in addition to evaluating the substance of the proposal, commenters must also evaluate the rigor of the Commission’s cost/benefit analysis, analysis of effects of the proposal on competition, efficiency, and capital formation, and statements regarding compliance with the Paperwork Reduction Act and Regulatory Flexibility Act. Since the February Proposal’s analysis of these points does not even consider the cumulative, or potentially contradictory, effects of the January Proposal, the challenge facing commenters and ultimately the Commission is that much greater.

The proposals both present important questions about the operation of the national market system that merit extensive and thoughtful comment. Accordingly, we strongly urge the Commission to issue a statement that clearly articulates how the January Proposal and the February Proposal are intended to work together and reconciles the conflicts described above. Otherwise, the public will not have a meaningful opportunity to comment on either proposal and will be denied the procedural rights guaranteed by the APA. We also believe that the Commission should extend the comment period for both proposals, with the comment period to commence after the Commission has issued its explanatory statement. Even if the Commission is unwilling to provide a clarifying statement regarding the interaction between the two proposals, an extension of the comment period for both proposals should occur to enable commenters to develop their views as comprehensively as possible.

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<sup>2</sup> We note that several commenters filed letters on the January Proposal before the issuance of the February Proposal and will now likely be forced to reevaluate their comments in light of the Commission’s subsequent actions. See, e.g., Letter from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, to Vanessa Countryman, Secretary, Commission (February 5, 2020) (the “NYSE Comment Letter”).

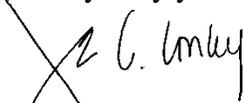
<sup>3</sup> 5 U.S.C. §§ 551 to 559.

February 28, 2020

Page 4

We greatly appreciate your consideration of this petition. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Joan C. Conley

cc: Honorable Jay Clayton, Chairman  
Honorable Hester M. Peirce  
Honorable Elad L. Roisman  
Honorable Allison Herren Lee  
Brett Redfearn, Director, SEC Division of Trading and Markets