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[redacted]

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Via Electronic Filing
Vanessa Countryman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Order Disapproving the Thirty-Seventh Substantive Amendment to the Second Restatement of the CTA Plan and the Twenty-Eighth Substantive Amendment to the Restated CQ Plan

Order Disapproving the Fifty-First 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

Dear Ms. Countryman:

We are submitting this letter on behalf of the Operating Committees of the CTA Plan, CQ Plan, and UTP Plan (collectively, the "Plans")[1] regarding the above-captioned disapproval orders (the "Disapproval Orders")[2] of the proposed amendments to implement the non-fee-related aspects of the Commission's Market Data Infrastructure Rules ("MDI Rules").[3] The purpose of this submission is to note certain inaccuracies that the Operating Committees believe are present in the Disapproval Orders relating to the Proposed Amendments' compliance with SEC Rule 614(e). For simplicity, the below discussion and references relate to the disapproval order and amendments for the CTA Plan and CQ Plan; however, except for particular items that relate to the scope of a specific Plan, the discussion below is equally applicable to the disapproval order and amendments to the UTP Plan.

First, the Disapproval Orders state that:

> [T]he Proposed Amendments impermissibly provide for the dissemination by the Plans of consolidated market data to competing consolidators and

[1] The following Participants do not join in submitting this letter: Investors' Exchange LLC; Long-Term Stock Exchange, Inc.; Members Exchange; and MIAX Pearl, LLC.
[2] *See* Securities Exchange Act Release No. 95850 (Sept. 21, 2022), 87 FR 58560 (Sept. 27, 2022); Securities Exchange Act Release No. 95848 (Sept. 21, 2022), 87 FR 58544 (Sept. 27, 2022).
[3] *See* Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021); Securities Exchange Act Release No. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021) ("Proposed Amendments").

> self-aggregators, which is inconsistent with Rule 603(b), which requires the Participants to make available the data necessary to generate consolidated market data to competing consolidators and self-aggregators so that, pursuant to Rule 614(d), those entities can generate consolidated market data themselves.[4]

However, Section VI(a) of the proposed amendment to the CQ Plan in fact requires ***each Participant*** to provide the necessary quotation information to Competing Consolidators and Self-Aggregators required to be made available by such Participant by Rule 603(b), including all data necessary to generate consolidated market data. Similarly, Section VII(a) of the amended CTA Plan requires ***each Participant*** to provide last sale price information to Competing Consolidators and Self-Aggregators. These provisions clearly place the obligation on the Participant to disseminate the data required to generate consolidated market data. As a result, it is not clear to the Operating Committees why the Disapproval Orders state that the Proposed Amendments provide that the Plans will be disseminating consolidated market data to Competing Consolidators and Self-Aggregators, as this statement appears inconsistent with the plain language of the Proposed Amendments.

Second, the Disapproval Orders state that the Proposed Amendments do not define "consolidated market data" or the data to generate it.[5] However, the Proposed Amendments added to the preface of each Plan that "[t]erms used in this plan have the same meaning as the terms defined in Rule 600(b) under the Act."[6] Therefore, the Proposed Amendments make clear that the Plans utilize the exact same definitions as set forth in Rule 600(b). The Disapproval Orders also state that this incorporation by reference "creates ambiguity because the Proposed Amendments use the terms adopted by the MDI Rules but do not include definitions of those terms, so their applicability and the obligations they create are unclear or are not reflected in the Proposed Amendments."[7] This statement is confusing because the proposed language makes clear that the terms, as used in the Plans, have the exact same meaning as they do in Rule 600(b), thereby removing any possibility of inconsistency or ambiguity that might arise if the Plans instead included stand-alone definitions of these terms.

Third, the Disapproval Orders state that the Proposed Amendments fail to amend the CTA Plan to require the individual Participants to disseminate data necessary to generate consolidated market data to Competing Consolidators and Self-Aggregators.[8] This conclusion appears to be based on a misunderstanding as to the scope of the information disseminated pursuant to the CTA Plan; the CTA Plan is a transaction reporting plan and therefore, the only relevant information to be disseminated pursuant to the CTA Plan is last sale price information. As referenced above, Section VII(a) of the amended CTA Plan requires each Participant to provide last sale price information to Competing Consolidators and Self-Aggregators. As such,

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[4] 87 FR at 58568.
[5] *Id.* at 58570.
[6] *See* 17 CFR § 242.600. The term "consolidated market data" is defined in Rule 600(b)(19). 17 CFR § 242.600(b)(19).
[7] 87 FR at 58570
[8] *Id.* at 58568

the amended CTA Plan requires the Participants to disseminate the data that is relevant to a transaction reporting plan.

Fourth, the Disapproval Orders state that the Proposed Amendments fail to remove references to the exclusive processors.[9] This conclusion relates to an issue that the Operating Committees addressed in a comment letter after the Division of Trading and Markets instituted proceedings to determine whether to approve or disapprove the Proposed Amendments. In particular, pursuant to the phased transition period set forth in the MDI Rules Release, the Plans must conduct a parallel operation period during which the decentralized consolidation model introduced by the MDI Rules will run in parallel to the existing exclusive SIP model. In the MDI Rules Release, the Commission described three phases to implementing the decentralized consolidation model: Phase One - Go-Live; Phase Two - Initial Parallel Operation Period; and Phase Three – Retirement of Exclusive SIPs.[10] During Phase Two, as described in the MDI Rules Release, "the exclusive SIPs will continue to provide the market data required under the current effective national market system plan(s)."[11] After completion of the parallel operation period, the Plans are required to submit an amendment to effectuate a cessation of the operations of the exclusive SIPs, which would include removing references of the exclusive SIPs from the text of the Plans. The MDI Rules therefore specifically require the parallel operation of the exclusive processors with the Competing Consolidators and Self-Aggregators. The Disapproval Orders' conclusion noted above appears to contradict this directive in the MDI Rules Release, which requires the submission of an amendment to remove references of the exclusive SIPs only after the end of the parallel operation period.[12]

Fifth, the Disapproval Orders state that the amended Plans fail to reflect that the exclusive processors will no longer have the responsibility to disseminate regulatory halt notices once the decentralized consolidation model has been implemented.[13] Again, as stated above, this conclusion does not take into account the parallel operation period required by the MDI Rules, during which the exclusive processors will still operate alongside the Competing Consolidators and Self-Aggregators.[14]

Finally, the Disapproval Orders state that the Proposed Amendments fail to include requirements for the Participants to timestamp every element of data necessary to generate

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[9] *Id.* at 58569.

[10] See Securities Exchange Act Release No. 90610 (Dec. 9, 2020), 86 FR 18596 (Apr. 9, 2021) (File No. S7- 03-20) ("MDI Rules Release").

[11] *Id.* at 18699-701.

[12] *Id.* at 18701. ("Within 90 days of the end of the initial parallel operation period, the Operating Committee will make a recommendation to the Commission as to whether the exclusive SIPs should be decommissioned. **The Commission will consider an effective national market system plan amendment to effectuate a cessation of the operations of the exclusive SIPs and, if consistent with the requirements of Rule 608 and the Exchange Act, approve such an amendment.** Such an approval order will facilitate the final completion of the transition over to the new decentralized consolidation model.") (emphasis added).

[13] 87 FR at 58568-69.

[14] *See also* MDI Rules Release at 18700-01 ("With respect to regulatory data during the initial parallel operation period, the existing SIPs will be required to continue to calculate and generate the regulatory data that they do currently—such as LULD price bands and messages regarding the triggering of a market-wide circuit breaker—and will provide this information to the primary listing exchanges, who will in turn make this information available to competing consolidators and self-aggregators.").

consolidated market data.[15] It appears that this statement is based on two misapprehensions. First, the Disapproval Orders state that the amendments to the CTA Plan only address timestamps for last sale price information and not all information with respect to quotations for and transaction in NMS stocks that is necessary to generate consolidated market data.[16] As explained above, however, the Disapproval Orders do not recognize the respective scope of the two Plans—the CQ Plan governs quotations while the CTA Plan governs transactions. As a transaction reporting plan, the CTA Plan can only address timestamps related to last sale price information. Second, Sections VI(a)(ii)(A) and (B) of the amended CQ Plan specifically require Participants to provide the time of the bid or offer when generated by the relevant Participant, and Section VI(a) also requires Participants to provide the time the Participant made such bid and offer available to Competing Consolidators and Self-Aggregators. Section VI(c) of the amended CTA Plan contains similar provisions. Consequently, the Operating Committees believe that the Proposed Amendments complied with the requirements of Rule 614(e)(2).

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We appreciate the opportunity to submit this letter to clear up any misconceptions about the Proposed Amendments. To the extent that SEC Staff feels they are warranted, the Operating Committees would welcome further discussions regarding the Disapproval Orders.

Respectfully Submitted

/s/ James P. Dombach

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Cc: Haoxiang Zhu, Director, SEC Division of Trading and Markets
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[15] *Id.* at 58569
[16] *Id.*