

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99994; File No. 4-820)

April 19, 2024

Options Price Reporting Authority; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Amendment To Modify Section 5.2(c)(iii) of the OPRA Plan Relating to Dissemination of Exchange Proprietary Data Information

I. Introduction

On November 8, 2023, the Cboe BZX Exchange, Inc. (“BZX Options”), Cboe Exchange, Inc. (“Cboe Options”), Cboe C2 Exchange, Inc. (“C2 Options”), and Cboe EDGX Exchange, Inc. (“EDGX Options”) (collectively, the “Sponsors” or “Cboe”) filed with the Securities and Exchange Commission (“Commission”) a proposed amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA Plan”). The proposed amendment was published for comment in the Federal Register on January 22, 2024.¹

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

II. Proceedings to Determine Whether to Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,³ and Rules 700 and 701 of the Commission’s Rules of Practice,⁴ to determine whether to

¹ See Options Price Reporting Authority; Notice of Filing of Proposed Amendment to Modify Section 5.2(c)(iii) of the OPRA Plan Relating to Dissemination of Exchange Proprietary Data Information, Securities Exchange Act Release No. 99345 (Jan. 16, 2024), 89 FR 3963 (Jan. 22, 2024) (“Notice”). Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-820/4-820.htm>.

² 17 CFR 242.608(b)(2)(i).

³ Id.

⁴ 17 CFR 201.700; 17 CFR 201.701.

approve or disapprove the proposed amendment or to approve the proposed amendment with any changes or subject to any conditions the Commission deems necessary or appropriate. The Commission is instituting proceedings to have sufficient time to consider the issues raised by proposed amendment, including comments received. 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 amendment 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."⁵ 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.⁶ In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁷ the Commission is providing notice of the grounds for disapproval under consideration:

- Whether, consistent with Rule 608 of Regulation NMS, the Sponsors have demonstrated that the proposed amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove

⁵ 17 CFR 242.608(b)(2) (referring to the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., ("Act" or "Exchange Act")).

⁶ See id.

⁷ See 17 CFR 242.608(b)(2)(i).

impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.⁸

Under the Commission’s Rules of Practice, the “burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder... is on the plan participants that filed the NMS plan filing.”⁹ The description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.¹⁰ Any failure by the Sponsors to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.¹¹

III. 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 proposed amendment. In particular, the Commission asks that commenters address the sufficiency and merit of the Sponsors’ statements in support of the proposed amendment, in addition to any other comments they may wish to submit about the proposed amendment.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will

⁸ See 17 CFR 242.608(b)(2).

⁹ 17 CFR 201.701(b)(3)(ii).

¹⁰ See id.

¹¹ See id.

consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,¹² any request for an opportunity to make an oral presentation.¹³

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 4-820 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 4-820. 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 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 a.m. and 3 p.m. Copies of the filing also will

¹² 17 CFR 242.608(b)(2)(i).

¹³ 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).

be available for inspection and copying at the Sponsors' principal offices. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number 4-820 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(85).