UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of CBOE BZX EXCHANGE, INC., CBOE EXCHANGE, INC., CBOE C2 EXCHANGE, INC., and CBOE EDGX EXCHANGE, INC.	Admin. Proc. File No. 3-21779

OPERATING COMMITTEE'S OPPOSITION TO CBOE'S BRIEF SUPPORTING EXERCISE OF COMMISSION REVIEW UNDER RULE 608(d)

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INTRODUCTION

The Options Price Reporting Authority ("OPRA"), and the Participant Exchanges (the "Participants") managing the operation of the market data plan governing options data, have been tasked with overseeing the provision of real-time options data to the public. The Participants and OPRA are governed through OPRA's operating agreement, known as the OPRA Plan. By its terms, the OPRA Plan requires the unanimous approval of its Participants to alter the language of the OPRA Plan, and in turn, modify the operation of the provision of real-time options data.[1] Inherent in such a structure is a principle that the economic interests of individual Participant Exchanges should not have the ability to interfere with the operation of OPRA—changes to the national market system governing the dissemination of options data should be done through consensus-building as to what is best for the market. But Cboe is attempting to upend that structure as part of its petition.

Cboe's petition, at its core, is a transparent attempt to sell its private market data feed to market data participants in a manner that would undermine the fair and orderly operation of the OPRA Plan. Importantly, it would allow market data participants to obtain a data feed from Cboe without obtaining a comparable product from OPRA. The result would undoubtedly cause OPRA's funding to be diverted directly to Cboe's coffers. This type of private economic interest is not appropriate for consideration as part of a Rule 608(d) proceeding.

Further, a Rule 608(d) proceeding is particularly inappropriate here for the reasons that Cboe highlights in its petition: Cboe states in its petition that soliciting public comment by notice is not appropriate as part of an administrative proceeding. In a situation where Cboe's new

[1] *See* OPRA Plan, Section 10.3, *available at* https://assets.website-files.com/5ba40927ac854d8c97bc92d7/5d0bd57d87d3ccca102102d7_OPRA%20Plan%20with%20Updated%20Exhibit%20A%20-%2006-19-2019.pdf ("OPRA Plan").

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interpretation would undermine OPRA's funding mechanism to bolster Cboe's economic interests, it would be antithetical to the purposes of Rule 608 specifically, and administrative law jurisprudence generally, to permit this private proceeding to change the operation of the OPRA Plan without notice-and-comment.

Finally, and perhaps most importantly, OPRA's Interpretation of the Equivalent Access Provision is correct.

I. BACKGROUND

OPRA is a securities information processor that is registered as such in accordance with Section 11A(b) of the Exchange Act. OPRA's members consist of the national securities exchanges that have been approved by the Securities and Exchange Commission (the "Commission" or "SEC") to provide markets for the listing and trading of exchange-traded options. These exchanges have been authorized by the Commission, pursuant to Section 11A(a)(3)(B) of the Exchange Act, to act jointly as parties to the OPRA national market system plan. The OPRA Plan governs the process by which options market data are collected from OPRA Plan participant exchanges, consolidated, and disseminated.[2]

OPRA (like most market data providers) offers two types of data streams: (1) a streaming, real-time data feed, and (2) a query-based system where data is provided only upon request. Why would a user utilize one over the other? A driving reason is cost, where a streaming, real-time data feed generally will cost more than a query-based system. The other reason is functionality: a streaming, real-time data feed provides continuous input and updates regarding the options market, while a query-based system will only provide updates where queried by the market data user.

[2] *In the Matter of the Application of Boston Options Exchange Group, LLC for Review of Action Taken by OPRA*, Exchange Act Release No. 34-59927, 2009 WL 1347419, at *1 (May 14, 2009).

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Prior to amendments in 2001, OPRA was the exclusive provider of information regarding options quotes and transactions; OPRA members could not sell proprietary market data products. In 2001, the SEC approved amendments to the OPRA Plan that lifted that complete prohibition in a terse approval order, which were designed to codify prior exemptions provided to ISE and CBOE in 2000.[3]

In March 2023, OPRA Members diverged on their interpretation of the OPRA Plan's Equivalent Access Provision. A majority of OPRA Members believed that the language could only be satisfied where a recipient of a streaming exchange proprietary data feed also maintains a streaming subscription to the full OPRA feed (i.e. the usage-based data service that provides the ability to query OPRA data would not be deemed to satisfy the Equivalent Access Provision for a streaming exchange proprietary data feed). Following months of discussion and deliberation between OPRA members, OPRA retained an independent third-party, James P. Dombach of Davis Wright Tremaine LLP, to advise. Counsel's interpretation was that the Equivalent Access Provision requires a user receiving a streaming, real-time exchange proprietary data product to also receive the full feed of streaming, real-time data from OPRA. On June 6, 2023, Counsel produced a memorandum regarding the same.[4] On September 6, 2023, the OPRA Management Committee, by majority vote, jointly determined to adopt counsel's interpretation (the "Interpretation"). Cboe voted to reject OPRA Counsel's interpretation.[5] At the time, SEC Staff agreed with the interpretation adopted by the majority of OPRA members.

Cboe filed its petition following OPRA's vote.

[3] *See* Securities Exchange Act Release No. 44580 (July 20, 2001), 66 FR. 39218 (July 27, 2001) (SR-OPRA-2001-02).
[4] *See* Memorandum from James P. Dombach, Davis Wright Tremaine LLP, to OPRA (June 9, 2023) regarding the Interpretation of Equivalent Access Provision in OPRA Plan ("Dombach Memo").
[5] *See* Minutes from the September 6, 2023 OPRA Conference Call.

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ARGUMENT

Through its petition, Cboe is attempting to upend OPRA's funding mechanism by permitting it to sell its data feed in a manner that has been prohibited for decades. As detailed below, the OPRA Plan's language requires a user receiving a streaming, real-time proprietary data product to also receive streaming, real-time data from OPRA.[6] Cboe's interpretation, however, would allow it to have undue market power by allowing it to sell its streaming data feed without a market data user having to obtain a comparative product through OPRA. This approach is contrary to the public interest and undermines fair and efficient markets—it only works to line the coffers of Cboe.

In its submissions, Cboe acknowledges that its proposed interpretation would allow subscribers to avoid having to purchase the OPRA streaming feed and replace it with Cboe's streaming feed. In other words, fees which are used to support the public data feed will now be directed to Cboe. The value of the public data streams to the market cannot be understated, assuring that the public has access to a reliable, consolidated view of the market. Cboe's incorrect interpretation would upend OPRA's funding mechanism, impede fair and orderly markets, and lead to potentially deleterious effects on the quality of the public stream.

I. CBOE'S PRIVATE ECONOMIC INTERESTS DO NOT SUPPORT COMMISSION REVIEW

Cboe's private economic interests are the reason why it is seeking Commission review, and quoting statutory language that led to the creation of OPRA and the other consolidated quotation systems does not support its position that Commission review is compelled in this circumstance. The Commission has historically declined to exercise discretion in reviewing Rule 608 petitions

[6] OPRA Plan Section 5.2(c).

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where the petition is motivated by the financial interests of a member of an NMS Plan.[7] For instance, in *American Stock Exchange*, AMEX sought discretionary review of CTA action to exclude from the calculation of AMEX's annual share of CTA revenue transactions in a derivative product.[8] In declining the review, the Commission noted that the petition

> concern[ed] individual financial interests, and not the broad objectives of the national market system. The Commission stated that it was not "the arbiter of individual competitive interests . . . .[9]

Similarly, in *Boston Stock Exchange et al.*, the Commission declined to exercise discretion where the petitioning participants alleged that the Network Administrator failed to follow the directive of a majority vote of participants to deduct legal expenses incurred in connection with a settlement prior to allocating the settlement proceeds among the participants.[10] The Commission noted that the issue was an internal business dispute regarding the correct interpretation of the Plans, and as such, did not exercise its discretion. Similarly, this matter involves a Plan interpretation where the petitioner is motivated by private financial interests rather than concerns over the proper operation of the national market system.

In arguing that Commission review is compelled in this circumstance, Cboe quotes Section 11A of the Exchange Act; however, Cboe is ignoring the importance of the OPRA Plan and other national market system plans in satisfying the requirements of Section 11A. Importantly, Section

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[7] In its brief, Cboe suggests that Rule 608(d) petitions are not discretionary by focusing on the term "shall" in Rule 608(d)(1). The argument is confusing since Rule 608(d) clearly states that "[t]he Commission may, *in its discretion*, entertain appeals . . . ."17 CFR 242.608(d) (emphasis added).

[8] *See American Stock Exchange*, 54 S.E.C. 491, 497-99 (2000) (dismissing appeal and declining to exercise discretion under former Exchange Act Rule 11Aa3-2(e) to review action taken at CTA meeting concerning calculation of revenue generated from the sale of transaction information in derivative product known as "Diamonds").

[9] *Id*. at 499-500 (quoting Procedures and Requirements for National Market System Plans, Exchange Act Rel. No. 17580 (Feb. 26, 1981), 22 SEC Docket 195, 198 (footnote omitted)).

[10] *See* Securities Exchange Act Release No. 34-58191 (July 18, 2008).

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11A(a)(3) authorized the Commission, by rule or order, to authorize or require self-regulatory organizations ("SROs") to act jointly with respect to matters as to which they share authority in planning, developing, operating, or regulating a national market system.[11] In other words, OPRA is an important and necessary component for ensuring that the goals of a national market system are met, including the availability to brokers, dealers, and investors of information with respect to quotations for and transaction in securities. Section 11A, on the other hand, does not suggest that the Commission has the authority to authorize Cboe's private interests to override the proper functioning of the consolidated market data streams.

To be clear, if Cboe wants to ensure the widespread availability of its Cboe One Options Feed, it is fully capable of doing so. Specifically, the OPRA Plan's interpretation does not prevent Cboe from disseminating its proprietary data feed. At the heart of Cboe's concerns is not market data recipients receiving its data feed, but instead concerns that market data users are not going to pay for both Cboe's data feed and the OPRA Plan's data feed. In other words, Cboe is concerned that market data users will not pay the price that Cboe wants to charge for its data feed if they are already receiving the consolidated market data stream. In providing the Cboe One Options Feed, Cboe charges (i) Distributor Fees of potential $15,000 per month; (ii) User Fees for both Professional and Non-Professional Users of up to $30.50 per user; (iii) Enterprise Fees up to $750,000 monthly fees; and (iv) a Data Consolidation Fee of $500 per month.[12] Collection of these fees is Cboe's primary concern and its impetus for filing its petition.

[11] *See* 15 U.S.C. § 78k–1.
[12] *See* Cboe Fee Schedule at 9, *available at* https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf.

II. COMMISSION CONSIDERATION OF CBOE'S PROPOSED INTERPRETATION AS PART OF AN ADMINISTRATIVE PROCEEDING IS NOT APPROPRIATE

Prior to amendments in 2001, OPRA was the exclusive provider of information regarding options quotes and transactions; OPRA members could not sell proprietary market data products. In 2001, the SEC approved amendments to the OPRA Plan that lifted that complete prohibition, and which were designed to codify prior exemptions provided to ISE and CBOE in 2000.[13] The approval order is terse in its description of the new language—it does not discuss if or how OPRA's funding would be affected by the new language. That lack of detail is telling—had the approval order been designed to upend OPRA's funding mechanism, it would have (and should have) explained in detail why such an approach was consistent with Section 11A of the Exchange Act.

If the Commission exercised its discretion, it would only further exacerbate the problem that Cboe's interpretation has never been publicly noticed. Any final decision will not be subject to notice and comment or industry input, and presumably, Cboe will not be required to provide an explanation as to why its financial motivations outweigh the potential harm flowing from the disruption to OPRA's funding. If Cboe desires such a drastic change to OPRA's and the industry's operation, it should go through the proper venues: (1) seek full OPRA approval of its proposed amendment to the OPRA Plan text (which would then be subject to notice and comment), or (2) file a petition for rulemaking with the Commission (which would then be subject to notice and comment if acted upon). However, Cboe has not pursued these available, legal alternatives. Instead, Cboe seeks to undermine OPRA and its funding mechanism, by permitting it to sell its own data feed in a manner that has been prohibited for decades and is contrary to the public interest.

[13] Securities Exchange Act Release No. 44580 (July 20, 2001), 66 FR 39218 (July 27, 2001) (SR-OPRA-2001-02) (Order Granting Partial Approval to the Portion of an Amendment to OPRA Plan To Permit Exchanges To Disseminate Unconsolidated Market Information to Certain of Their Members Under Certain Circumstances).

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In its briefing order, the Commission appropriately cited to the concerns raised in *NASD*,[14] where the Commission declined to exercise jurisdiction on the grounds that the issues raised required more "wide-based participation" than those afforded in a Rule 608(d) appeal. Cboe incredibly argues that those circumstances are not present here. Clearly, where Cboe is requesting that the Commission put its private financial interests ahead of those of the market, and upend the proper funding of the OPRA Plan, more widespread input is an absolute necessity before further action is taken. The two alternative approaches that OPRA outlines above would ensure the appropriate wide-based participation called for in *NASD*—the instant Rule 608(d) proceeding does not.

III. OPRA'S INTERPRETATION IS CORRECT AND ENSURES THE CONTINUED FUNDING OF OPRA

In addition to the fact that Cboe's petition is motivated by its private financial interests, the Commission should not exercise its discretion to review because the interpretation adopted by OPRA is correct. Granting review would waste scarce Commission and OPRA resources since any proceeding would come to the same conclusion. Moreover, it is critical to ensure the continued funding of OPRA in order to promote fair and efficient markets and that is exactly what OPRA's adopted interpretation of the Equivalent Access Provision accomplishes. Cboe's interpretation would allow a market data user to pay Cboe the higher fee for its streaming, real-time data feed while paying a much lower fee to OPRA for the query-based system. This is an incorrect interpretation that would harm OPRA's funding mechanism and only serve Cboe's private financial interests.

Section 5.2(c)(iii) of the OPRA Plan ("Equivalent Access Provision") governs the dissemination of exchange proprietary data and currently provides that:

[14] *Nat'l Ass'n of Secs. Dealers*, Exchange Act Release No. 48573, 2003 WL 22250397, at *3 (Sept. 30, 2003).

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(iii) A Member may disseminate its Proprietary Information pursuant to subparagraph (ii) of this paragraph (c) provided that:

(A) such dissemination is limited to other Members and to persons who also have equivalent access to consolidated Options Information disseminated by OPRA for the same classes or series of options that are included in the Proprietary Information. For purposes of this clause (A), "consolidated Options Information" means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed "equivalent" if both kinds of information are equally accessible on the same terminal or work station . . . .[15]

As detailed in the memorandum and further discussed below, "equivalent access" must be interpreted to require a user receiving a streaming, real-time proprietary data product to also receive streaming, real-time data from OPRA.

As it has repeatedly done in past submissions, Cboe presents the plain language meaning of "access" in interpreting the "equivalent access" provision. It is important to note, however, that "access" is a term of art that is used both within the OPRA Plan as well as in market data generally (appearing also in the equity market data plans). Therefore, according to rules of statutory construction, the term of art should be interpreted in accordance with its technical sense within this specific field.[16] Importantly, the term "access" is frequently associated with the manner and

[15] *See* OPRA Plan, Section 5.2(c)(iii).

[16] *See, e.g., U.S. v. Cuomo*, 525 F.2d 1285 (5th Cir. 1976) ("The sense of a word that is commonly used as a term of art in a particular discipline is the relevant sense for purposes of statutory construction, where the statute being construed deals with that discipline.").

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type of data feed that a user receives. Cboe claims that OPRA has not cited a single example of market participants treating "access as having a distinct meaning from is ordinary usage." That simply is not true.

In both the equity and options space, whether or not access fees are charged is based on the type of data product being received. For instance, receipt of full data streams (including the ability to control and manipulate the data in the stream) from both the equity and options market data plans can result in access fees, while the receipt of data in a manner that only allows the display or querying of data does not result in access fees.[17] Under Cboe's plain meaning interpretation of "access," i.e. "freedom or ability to . . . make use of something", the access fees would be charged to any market data recipient who receives market data. But Cboe's understanding of "access" in this context is misguided. Access fees are generally charged where a market data recipient is receiving a data in a streamed format that facilitates the recipient's ability to control and manipulate the data content, rather than simply viewing its display of the current state of the market or in a given security. This point is made abundantly clear by the OPRA fee schedule, which states that while a professional subscriber could be assessed an indirect access fee where they receive "a data feed transmission" from an OPRA vendor; a similar access fee is not charged to those receiving OPRA data on a usage basis. The difference in fees demonstrates that the two kinds of access to OPRA data are not equivalent. As a result, "access" should be interpreted in the context of market data technology and fee practice, being a reference to the manner and type of data feed being received. When combined with the term "equivalent," the entire phrase should be interpreted to refer to a requirement that a user receives data from OPRA in a manner that is equivalent to the

[17] *See, e.g.*, UTP Plan at 34, *available at* https://utpplan.com/DOC/Nasdaq-UTPPlan_Composite_as_of_June_6_3_21.pdf; OPRA Plan Fee Schedule at 1-2, *available at* https://assets.website-files.com/5ba40927ac854d8c97bc92d7/5bf2f4661faec762fa07826a_OPRA_Fee_Schedule.pdf.

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data being received through a proprietary data product. And importantly, streaming real-time data feed products assure that the full data content of those feeds is always available to a recipient's data processing systems, terminals, or workstations, whereas usage-based access to data means that the recipient user has to individually query to gain access to a specific piece of information at a given time.

Cboe's interpretation would essentially make the term "equivalent" redundant and unnecessary. According to rules of statutory construction, the interpretation of the term "equivalent access" should not be read as to make "equivalent" meaningless.[18] A subscriber has two means to "access" OPRA Plan's market data, either via the streaming, real-time data feed or through usage-based access. Had the OPRA Plan only required that a subscriber have access to either of the two modes of transmission, then the OPRA Plan could have simply used the term "access" rather than "equivalent access". And, in fact, the term "access" – without an "equivalent" modifier – is separately used throughout the OPRA Plan to more generically refer to someone who is receiving data from OPRA or a vendor, irrespective of the specific mode of access provided.[19] Rules of statutory construction weigh in favor of supporting an interpretation that gives "equivalent access" a different meaning than "access", which in turn leads to interpretation that "equivalent access" requires a person receiving a streaming, real-time proprietary data product to also receive streaming, real-time data from OPRA.

Additionally, Cboe has suggested that ambiguity flowing from the 2001 approval order and OPRA Plan's text requires the filing of a plan amendment to impose a condition that all persons

[18] *See, e.g., U.S. ex rel. Schweizer v. Oce N.V.*, 67 F.3d 1228 (D.C. Cir. 2012) (stating it is a "longstanding canon of statutory construction that terms in a statute should not be construed so as to render any provision of that statute meaningless or superfluous.").

[19] *See, e.g.*, OPRA Plan, Section 5.4(d)(i) ("OPRA may impose information fees and/or facilities charges upon all persons who have access to Options Information . . . .")

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who use exchange proprietary data products must also take streaming real-time data from OPRA. However, it is a canon of statutory interpretation that, where an exception is ambiguous, the exception should be narrowly construed to preserve the original intent of the broader rule.[20] In this case, the original rule was the prohibition of any sale of a proprietary data product, and the exception expressed those circumstances where proprietary data product could be sold alongside OPRA Plan data. As a result, the ambiguity must be resolved in limiting the circumstances where proprietary data product could be sold rather than broadening the scope.[21]

The SEC's Division of Trading and Markets has also weighed in and provided an Interpretation that aligns with OPRA's Interpretation. During multiple calls with two individual staff members of the Division of Trading and Markets, these SEC staff members expressed their viewpoint that the equivalent access provision would require the receipt of streaming, real-time data from OPRA alongside the receipt of a streaming, real-time proprietary data product. The plan amendment in 2001 was a codification of an exemption issued by the Division of Market Regulation (now the Division of Trading and Markets). As such, in effect, the Division of Trading and Markets Staff has provided an interpretation of the scope of the exemption that they granted to ISE and CBOE prior to the exemptions' codification in the OPRA Plan. This is yet another factor favoring OPRA's Interpretation of the Equivalent Access Provision. And the fact that the SEC Staff's Interpretation comports with OPRA's Interpretation of the provision is another reason for the SEC to decline discretionary review under Rule 608(d).

[20] *See, e.g.*, *Maracich v. Spears*, 570 U.S. 48 (2013) ("An exception to a 'general statement of policy' is 'usually read ... narrowly in order to preserve the primary operation of the provision.'"); *C.I.R. v. Clark*, 489 U.S. 726 (1989) ("In construing provisions such as § 356, in which a general statement of policy is qualified by an exception, we usually read the exception narrowly in order to preserve the primary operation of the provision.").

[21] Cboe has pointed to prior statements by other OPRA Members as part of Rule 19b-4 filings. These statements made eight years after the original adoption of the language are not probative of the original meaning of the OPRA Plan language.

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IV. CBOE'S PROPOSED INTERPRETATION IS CONTRARY TO THE PUBLIC INTEREST BY POTENTIALLY UPENDING OPRA'S FUNDING MECHANISM

Cboe's interpretation would allow a market data user to pay Cboe the higher fee for its streaming, real-time data feed while paying a much lower fee to OPRA for the query-based system. Given Cboe's unique position in the options space, such an interpretation would upend OPRA's funding mechanism, harm the public interest, and only serve Cboe's private financial interests.

Unlike in the equities space where most (if not all) listed equities trade on all exchanges, in the options space, some of the most widely-traded options trade exclusively on Cboe—in particular, VIX, SPX, and XSP. Because of the unique monopoly that Cboe has with respect to these high-volume options, if it were permitted to sell its streaming feed without a corresponding requirement to obtain the streaming OPRA feed, OPRA's funding would be significantly affected, disrupting its operation and future development. OPRA's decades-old prohibition on the sale of proprietary data products appears to acknowledge this concern, and the lifting of that restriction via the eventually codified exemption order was appropriately narrow.

Cboe repeatedly argues that OPRA's interpretation may block access to market data as cost-sensitive participants may be unable to afford a full-streaming subscription or may not have the technological capacity to process it. If such market data participants are cost sensitive or lack the technological capacity to handle a full-streaming subscription, then such market data participants can avail themselves of the usage-based, cost-effective service provided by OPRA. Further, Cboe's argument that the sophisticated market participants that require their full-streaming proprietary options market data product somehow lack the technological capacity to handle the OPRA streaming market data feed is simply not credible. Again, ultimately, the issue for Cboe is that many market participants will not see the value of subscribing to both Cboe's proprietary product and the OPRA feed, and as a result, Cboe is attempting to replace the public market data

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stream with its own product. Cboe's private interests must not threaten or overshadow the continued fair, orderly, and efficient operation of the public market data stream.

V. COMMISSION'S ADDITIONAL QUESTIONS

Finally, the Commission has asked the parties to address what procedural rules are appropriate to govern Rule 608(d) proceedings.[22] OPRA believes that the Cboe should file a rulemaking petition with the Commission, which would be subject to public notice and comment if acted upon. By soliciting public comment, investors and other market participants can have an opportunity to express their views. Such a procedure is consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.[23] This is the same process the Commission adhered to when approving the current version of the Equivalent Access Provision in 2003. And it is the same fair and effective process that the Commission should follow now.

As discussed *supra*, if the Commission exercised its discretion, it would only further exacerbate the problem that Cboe's interpretation has never been publicly noticed. Any final decision will not be subject to notice and comment or industry input, and presumably, Cboe will not be required to provide an explanation as to why its financial motivations outweigh the potential harm flowing from the disruption to OPRA's funding. If Cboe desires such a drastic change to OPRA's and the industry's operation, it should go through the proper venues: (1) seek full OPRA approval of its proposed amendment to the OPRA Plan text (which would then be subject to notice and comment), or (2) file a petition for rulemaking with the Commission (which would then be subject to notice and comment if acted upon). A discretionary Rule 608(d) proceeding is not a substitute for a rulemaking that is subject to notice and comment, which is designed to protect investors, promote fair and orderly markets, and protect the public interest.

[22] January 19, 2024 Order ("Order") at 4.
[23] *See* 17 C.F.R. § 242.608(d)(3).

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CONCLUSION

For the reasons stated above, the Commission should not exercise its discretion in reviewing Cboe's petition.

Dated: March 29, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, James Dombach, certify that on this day of March 29, 2024, I caused a copy of the foregoing to be filed through the SEC's eFAP system and served by electronic mail on:

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By: ___*/s/ James P. Dombach*___

James P. Dombach
Dated: March 29, 2024

CERTIFICATE OF COMPLIANCE

I, James P. Dombach, certify that this Opposition to Cboe's Brief Supporting Exercise Of Commission Review Under Rule 608(d), complies with the length limitations set forth in the Securities and Exchange Commission's Order Directing Filing of Additional Briefs dated January 19, 2024. I have relied on the word count feature of Microsoft Office for Word 365 in verifying this brief contains 5054 words.

By: *__/s/ James P. Dombach__*

James P. Dombach
Dated: March 29, 2024

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17 C.F.R. § 201.151(e) Certificate

I, James P. Dombach, pursuant to 17 C.F.R. § 201.151(e)(3), certify that this Opposition to Cboe's Brief Supporting Exercise Of Commission Review Under Rule 608(d), does not contain sensitive personal information as defined in 17 C.F.R. § 201.151(e).

By: */s/ James P. Dombach*

James P. Dombach
Dated: March 29, 2024