

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88384; File No. SR-CTA-2019-02)

March 13, 2020

Consolidated Tape Association; Order Approving the Thirty-First Substantive Amendment to the Second Restatement of the CTA Plan Regarding Publication of Trade Reports During Race Conditions

I. Introduction

On September 11, 2019, participants¹ of the Consolidated Tape Association Plan (“CTA Plan” or “Plan”) filed² with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)³ and Rule 608 of Regulation NMS thereunder,⁴ a proposal to amend the Second Restatement of the CTA Plan.⁵ This amendment represents the Thirty-First Substantive Amendment to the CTA Plan (“Amendment”). The Participants have proposed to align provisions of the Plan that govern dissemination of last-sale

¹ These participants are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; The Investors’ Exchange LLC; Long-Term Stock Exchange, Inc.; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX, Inc.; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc. (each a “Participant” and collectively, the “Participants”).

² See Letter from Robert Books, Chairman, Operating Committee, CTA Plan, to Vanessa Countryman, Secretary, Commission (dated September 6, 2019).

³ 15 U.S.C 78k-1(a)(3).

⁴ 17 CFR 242.608.

⁵ The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-NASDAQ-listed securities, is a “transaction reporting plan” under Rule 601 of Regulation NMS, 17 CFR 242.601, and a “national market system plan” under Rule 608 of Regulation NMS, 17 CFR 242.608. See Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR at 17799 (May 20, 1974) (declaring the CTA Plan effective).

price reports by the Processor⁶ during a Regulatory Halt⁷ with corresponding provisions of the Nasdaq/UTP Plan.⁸ The Amendment was published for comment in the Federal Register on January 28, 2020.⁹ One comment letter was received.¹⁰ This order approves the Amendment to the Plan.

II. Description of the Proposal

The Plan currently prohibits the Processor from disseminating last-sale reports that are received by the Processor during a Regulatory Halt.¹¹ This prohibition applies even if a trade occurs on the Participant just before the Participant receives notification from the Processor of a Regulatory Halt. If the Participant reports the trade to the Processor during this “race condition,” the Processor might not be able to determine whether the trade occurred before or after the Participant had received notification of the Regulatory Halt. Under the Nasdaq/UTP Plan, the Processor immediately disseminates trade reports in this instance.¹²

The Participants have proposed to amend the Plan to provide that, during a Regulatory

⁶ See Section I(x) of the Plan (defining “Processor”).

⁷ See Section XI(a) of the Plan (defining “Regulatory Halt”).

⁸ 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 Privilege Basis (“Nasdaq/UTP Plan”) governs the collection, consolidation, processing, and dissemination of last-sale and quotation information for Network C securities.

⁹ See Securities Exchange Act Release No. 88016 (January 23, 2020), 85 FR 5060 (January 28, 2020).

¹⁰ See Letter from Kelvin To, Founder and President, Data Boiler Technologies LLC, to Vanessa Countryman, Secretary, Commission (dated February 4, 2020). The comment letter is not germane to the Amendment.

¹¹ See Section XI(a) of the Plan (providing, in relevant part, that “[d]uring the period of any Regulatory Halt in trading in any Eligible Security by the listing market therefor, the consolidated tape shall not include any reports of last-sale prices in such Security received by the Processor during the period of the Regulatory Halt”).

¹² See Section X.C of the Nasdaq/UTP Plan (providing, in relevant part, that “[d]uring a Regulatory Halt, the Processor shall collect and disseminate Transaction Information”).

Halt, the consolidated tape shall include any last-sale report that is received by the Processor during the Regulatory Halt. Thus, the Processor would act as a pass-through for information received from the Participants, and the Processor would not have to attempt to ascertain whether a trade reported to it by a Participant happened before or after the Participant had received notification of a Regulatory Halt. This proposal by the CTA Plan Participants is designed to harmonize with Nasdaq/UTP Plan provisions for how trades are handled by Plan Processors during race conditions and apply a uniform procedure for all trading in NMS stocks throughout the national market system.

The Participants also proposed to update certain cross-references to exchanges rules relating to re-opening procedures.

III. Discussion

After careful review, the Commission finds that the Amendment is consistent with the requirements of the Act and the rules and regulations thereunder.¹³ In particular, the Commission finds that the Amendment is consistent with Section 11A of the Act which provides, among other things, that the Commission may prescribe rules as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in securities and the fairness and usefulness of the form and content of such information.¹⁴ The Commission also finds that the Amendment is consistent with Rule 608 of Regulation NMS, which provides that the Commission shall approve an amendment to a Plan if it finds that such amendment is necessary or appropriate in

¹³ The Commission has considered the Amendment's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ See 15 U.S.C. 78k-1(c)(1)(B).

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.¹⁵

The Commission believes that the Amendment furthers these goals by eliminating any burden on the Processor to determine whether a trade that is reported to the Processor during a race condition occurred before or after the Participant who reported the trade had received notice of a Regulatory Halt. Under the Amendment, the Processor could presume that any such trades occurred before the Regulatory Halt, thereby allowing the Processor to continue publishing those trade reports to the consolidated tape. The Commission believes that market observers could derive benefits from continuing to learn about trades occurring just before a Regulatory Halt that, under the existing Plan provisions, the Plan Processor might not print to the consolidated tape.

The Commission notes that it is also approving today a similar proposal by the Nasdaq/UTP Plan Participants to eliminate an ambiguity in that Plan regarding how the Processor handles last-sale price reports during a Regulatory Halt.¹⁶ As a result, both Plans will have uniform provisions in this regard. The Commission believes that approving these two Plan amendments furthers the principle set forth in Section 11A of the Act that “[t]he linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors’ orders, and contribute to best execution of such orders”¹⁷ by harmonizing across the entire national market system how last-sale price reports for all NMS stocks are printed

¹⁵ See 17 CFR 240.608(b)(2).

¹⁶ See Securities Exchange Act Release No. 34-88385 (March 13, 2020) (File No. S7-24-89).

¹⁷ 15 U.S.C. 78k-1(a)(1)(D).

to the consolidated tape during race conditions and by eliminating any ambiguity in the duties of the Plan Processors in this regard.

Finally, the Commission finds that updating cross-references in the Plan is consistent with the Act.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act and the rules thereunder that the Amendment to the Plan (File No. SR-CTA-2019-02) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(29).