

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94310; File No. SR-CTA/CQ-2021-02)

February 24, 2022

Consolidated Tape Association; Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Thirty-Seventh Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Eighth Substantive Amendment to the Restated CQ Plan

I. INTRODUCTION

On November 5, 2021,¹ the Participants² in the Second Restatement of the Consolidated Tape Association (“CTA”) Plan and Restated Consolidated Quotation (“CQ”) Plan (collectively “CTA/CQ Plans” or “Plans”)³ filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)⁴ and

¹ See Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

² The 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., MEMX LLC, MIAX PEARL, LLC, 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. (collectively, the “Participants”).

³ 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. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a “national market system plan” under Rule 608 under the Act, 17 CFR 242.608. See Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR at 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR at 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR at 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995.

⁴ 15 U.S.C 78k-1(a)(3).

Rule 608 of Regulation National Market System (“NMS”) thereunder,⁵ a proposal (the “Proposed Amendments”) to amend the Plans to implement the non-fee-related aspects of the Commission’s Market Data Infrastructure Rules (“MDI Rules”).⁶ The Proposed Amendments were published for comment in the Federal Register on November 29, 2021.⁷

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,⁸ to determine whether to disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

II. SUMMARY OF THE PROPOSED AMENDMENTS⁹

The Participants propose to amend the Plans to comply with Rule 614(e) of the MDI Rules. Rule 614(e) requires participants to the effective national market system plan(s) for NMS stocks to file by November 5, 2021, an amendment with the Commission that includes each of the requirements of Rule 614(e)(1) – (5).¹⁰

Specifically, Rule 614(e)(1) requires the amendment to conform the effective national market system plan(s) for NMS stocks to reflect the provision of information with respect to

⁵ 17 CFR 242.608.

⁶ See Securities Exchange Act Release No. 90610, 86 FR 18596 (Apr. 9, 2021) (File No. S7-03-20) (“MDI Rules Release”).

⁷ See Securities Exchange Act Release No. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021) (“Notice”). Comments received in response to the Notice are available at <https://www.sec.gov/comments/sr-ctacq-2021-02/srctacq202102.htm>.

⁸ 17 CFR 242.608(b)(2)(i).

⁹ The full text of the Proposed Amendments appear as Attachments A and B to the Notice. See Notice, supra note 7, 86 FR at 67802–29.

¹⁰ 17 CFR 242.614(e). The Participants have submitted separate amendments to implement the fee-related aspects of the MDI Rules. See Securities Exchange Act Release No. 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (File No. SR-CTA/CQ-2021-03).

quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators.

Rule 614(e)(2) requires the amendment to include the application of timestamps by the national securities exchange and national securities association participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated as applicable by the national securities exchange or national securities association and the time the national securities exchange or national securities association made such information available to competing consolidators and self-aggregators.

Rule 614(e)(3) requires the amendment to include assessments of competing consolidator performance, including speed, reliability, and cost of data provision and the provision of an annual report of such assessment to the Commission.

Rule 614(e)(4) requires the amendment to include the development, maintenance and publication of a list that identifies the primary listing exchange for each NMS stock.

Rule 614(e)(5) requires the amendment to include the calculation and publication on a monthly basis of consolidated market data gross revenues for NMS stocks as specified by (i) listed on the NYSE; (ii) listed on Nasdaq; and (iii) listed on exchanges other than NYSE or Nasdaq.

The following is a summary of the changes proposed to be made to the Plans by the Proposed Amendments.

CTA Plan Proposed Amendments

Preface

Under the Proposed Amendments, the CTA Plan would include the following new provision: “Terms used in this plan have the same meaning as the terms are defined in Rule 600(b) under the Act.”

Section I. – Definitions

The Proposed Amendments add a definition of “Primary Listing Exchange,” as new Section I.(x), which means “the national securities exchange on which an Eligible Security is listed.” The proposed definition further states, “[i]f an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.”

Section IV. – Administration of the CTA Plan

The Proposed Amendments add new Section IV.(e), Plan Website Disclosures, requiring CTA to publish on the CTA Plan’s web site the Primary Listing Exchange for each Eligible Security, and, on a monthly basis, the consolidated market data gross revenues for Eligible Securities as specified by Tape A and Tape B securities. The Participants explain that this addition is intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(i) and (iii).¹¹

Section V. – The Processor and Competing Consolidators

The Proposed Amendments amend the title of Section V. to include competing consolidators, such that it is now titled “The Processor and Competing Consolidators” and add new Section V.(f), Evaluation of Competing Consolidators, to require the Operating Committee to assess the performance of competing consolidators on an annual basis and to submit an annual

¹¹ See Notice, supra note 7, 86 FR at 67800.

report to the Commission containing the assessment. The Proposed Amendments require this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these additions are intended to comply with the requirements of Rule 614(e)(3).¹²

In addition, the Proposed Amendments require the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).¹³ Rule 614(d)(5) requires competing consolidators to publish on their websites monthly performance metrics as defined by the effective national market system plan(s) for NMS stocks.¹⁴ The Proposed Amendments add the following monthly performance metrics to this section:

- (i) Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;
- (ii) Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;
- (iii) System availability statistics, including system up-time percentage and cumulative amount of outage time;
- (iv) Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

¹² See id.

¹³ 17 CFR 242.614(d)(5).

¹⁴ Id.

- (v) Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:
- (A) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;
 - (B) When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and
 - (C) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

The Participants explain that they have proposed to amend Section V. to define the monthly performance metrics in accordance with Rule 614(d)(5).¹⁵

Section VI. – Consolidated Tape

The Proposed Amendments amend Section VI.(c), Reporting Format and Technical Specifications, to include a reference to competing consolidators and self-aggregators such that last sale price information relating to a completed transaction in an Eligible Security reported to competing consolidators and self-aggregators by any Participant or other reporting party shall be in the format required in Section VI.(c).

In addition, the Proposed Amendments amend Section VI.(c) to delete from the required format the time of the transaction (reported in microseconds) as identified in the Participant's matching engine publication timestamp, and replace it with the time the last sale price information was generated by the Participant (reported in microseconds). Furthermore, the

¹⁵ See Notice, supra note 7, 86 FR at 67800.

Proposed Amendments amend Section VI.(c) to add to the required format, with respect to reports to competing consolidators and self-aggregators, the time the Participant made the last sale price information available to competing consolidators and self-aggregators (reported in microseconds). The Participants explain that the proposed references to competing consolidators and self-aggregators and the proposed requirement to report in microseconds the time that a Participant made the last sale price information available to competing consolidators and self-aggregators are intended to comply with Rule 614(e)(1) and (2).¹⁶

With respect to FINRA, the Proposed Amendments amend a statement in Section VI.(c) that the time of the transaction shall be the time of execution that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules. The Proposed Amendments change this statement to state that the time the last sale price information was generated by a Participant shall be the time that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules. The Proposed Amendments also add references to competing consolidators and self-aggregators such that if FINRA's trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, competing consolidators and self-aggregators, then the FINRA trade reporting facility shall also furnish the Processor, competing consolidators, and self-aggregators with the time of the transmission as published on the facility's proprietary feed.

The Proposed Amendments also delete Section VI.(g), ITS Transactions, which concerns last sale prices reflecting ITS transactions. The Participants explain that they are proposing to remove this provision because the ITS is obsolete.¹⁷

¹⁶ See id.

¹⁷ See id.

Section. VIII. Collection and Reporting of Last Sale Data

The Proposed Amendments amend Section VIII.(a), Responsibility of Exchange Participants, to remove a list of exchange participants and the requirement that each collects and reports to the Processor all last sale price information to be reported to it relating to transactions in Eligible Securities taking place on its floor. The Proposed Amendments amend this statement to state that each Participant agrees to collect and report to the Processor all last sale price information to be reported by it relating to transactions in Eligible Securities.

The Proposed Amendments also add a statement that each Participant further agrees to collect and report to competing consolidators and self-aggregators all last sale price information to be reported to it related to transactions in Eligible Securities in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person.¹⁸ In addition, the Proposed Amendments amend Section VIII.(b), FINRA Responsibility, to add references to competing consolidators and self-aggregators such that the provision states: “The FINRA shall develop and adopt rules governing the reporting of last sale price information to be reported by its members to both the Processor for inclusion on the consolidated tape and to Competing Consolidators and Self-Aggregators. Such rules shall ... (ii) be designed to avoid duplicate reporting of transactions on the consolidated tape or to Competing Consolidators and Self Aggregator...” The Participants explain that these additions are designed to comply with Rule 614(e)(1).¹⁹

¹⁸ The Proposed Amendments also delete the following statement from Section VIII.(a): “CTA shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.”

¹⁹ See Notice, supra note 7, 86 FR at 67801.

Finally, the Proposed Amendments delete Section VIII.(c), Description of Reporting Procedures, which states that each Participant and each other reporting party has prepared and submitted to CTA and the Commission a description of the procedures by which it collects and reports to the Processor last sale price information reported by it pursuant to the CTA Plan. The Participants explain that this provision is no longer relevant under the MDI Rules.²⁰

Section IX. – Receipt and Use of CTA Information

In Sections IX.(a), Requirements for Receipt and Use of Information, (b), Approvals of Redisseminators and Terminations of Approvals, and (c), Subscriber Terminations, the Proposed Amendments replace several references to “each CTA network’s information,” “a CTA network’s information,” “that CTA network’s information,” and “that CTA network’s last sale price information” with the term “consolidated market data”.

The Proposed Amendments also amend Section IX.(a) to include references to competing consolidators and self-aggregators. Proposed Section IX.(a) states that, “[p]ursuant to fair and reasonable terms and conditions, each CTA network’s administrator shall provide for: (i) the dissemination of consolidated market data on terms that are not unreasonably discriminatory to Competing Consolidators, Self-Aggregators, vendors, newspapers, Participants, Participant members and member organizations, and other persons over that network’s ticker and over the high speed line; and (ii) the use of consolidated market data by Competing Consolidators, Self-Aggregators, vendors, subscribers, newspapers, Participants, Participant members and member organizations and other persons.” Additionally, the section now states that each CTA network’s Participants will determine the terms and conditions applying in respect of a particular manner of receipt or use of consolidated market data including whether the manner of receipt or use will

²⁰ See id.

require recipients or users to enter into agreements with the CTA network's administrator, and that these determinations will be made in a reasonably uniform manner to subject all parties that receive or use consolidated market data in a particular manner to terms and conditions that are substantially similar.

In addition, the Proposed Amendments amend Section IX.(a) to state that the Participants expect their CTA network's administrator to require the following parties to enter into agreements with the CTA network administrator: (i) any party that receives a CTA network's information by means of a direct computer-to-computer interface with the Processor or competing consolidator; (ii) any competing consolidator or self-aggregator that receives last sale transaction information directly from a Participant for the purpose of creating consolidated market data; (iii) vendors and other parties that disseminate consolidated market data to others; and (iv) persons that use consolidated market data for such purposes as that CTA network's administrator may from time to time identify.

The Participants explain that the proposed revisions to Section IX.(a) intend to make clear that the current market data contracts regarding the receipt of market data will be applicable to competing consolidators and self-aggregators.²¹ They believe that the change is consistent with Rule 614(e)(1) and is necessary, stating that competing consolidators and self-aggregators would be receiving and using consolidated market data and should be subject to the same contracts applicable to vendors and subscribers.²²

The Proposed Amendments amend Section XI.(b), Approvals of Redisseminators and Terminations of Approvals, to state that all vendors and other parties that disseminate

²¹ See id.

²² See id.

consolidated market data (“data redisseminators”) shall be required to be approved by a CTA network’s administrator. Additionally, the Proposed Amendments amend Section XI.(c), Subscriber Terminations, to state that a CTA network’s administrator may determine that circumstances warrant directing a data redisseminator to cease providing consolidated market data to a subscriber, and that the CTA network’s Participants may direct the data redisseminator to cease providing consolidated market data to the subscriber if a majority of those Participants determine that (i) such action is necessary or appropriate in the public interest or for the protection of investors, or (ii) the subscriber has breached any agreement required by the CTA network’s administrator pursuant to Section IX.

Section XI. – Operational Matters

The Proposed Amendments delete from Section XI.(a), Regulatory and Operational Halts, the definition of “Primary Listing Market” in Section XI.(a)(i)(H) and the definition of “Trading Center” in Section XI.(a)(i)(N).

The Proposed Amendments add a reference to competing consolidators and self-aggregators to Section XI.(a)(ii), Operational Halts, to state that a Participant shall notify competing consolidators and self-aggregators if it has concerns about its ability to collect and transmit quotes, orders or last sale prices, or where the Participant has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee. In addition, the Proposed Amendments add a reference to competing consolidators and self-aggregators to Section XI.(a)(viii), Communications, to require a Primary Listing Exchange for an Eligible Security to notify competing consolidators and self-aggregators if it determines to initiate a Regulatory Halt.

The Proposed Amendments also replace references to “Primary Listing Market” with “Primary Listing Exchange throughout Section XI.

The Participants state that their revisions to Section XI to include references to notifying competing consolidators and self-aggregators in connection with Regulatory and Operational Halts are consistent with Rule 614(e)(1) and would ensure that competing consolidators and self-aggregators are notified of information related to Regulatory and Operational Halts and that competing consolidators can disseminate this information to their customers.²³

CQ Plan Proposed Amendments

Preface

Under the Proposed Amendments, the CQ Plan would include the following new provision: “Terms used in this plan have the same meaning as the terms are defined in Rule 600(b) under the Act.”

Section I. – Definitions

The Proposed Amendments add a definition of “Primary Listing Exchange” as new Section I.(v), which means “the national securities exchange on which an Eligible Security is listed.” The proposed definition further states, “[i]f an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.”

The Proposed Amendments amend the definition of “Quotation Information” in Section I.(x) (formerly, Section I.(w)) to change a reference to “consolidated BBO” to “NBBO,” such that Quotation Information now means, among other things, “(iii) each NBBO contained in the foregoing information and any identifier associated therewith....”

²³ See id.

Section IV. – Administration of this CQ Plan

The Proposed Amendments add new Section IV.(d), Plan Website Disclosures, requiring the Operating Committee to publish on the CQ Plan’s web site the Primary Listing Exchange for each Eligible Security, and, on a monthly basis, the consolidated market data gross revenues for Eligible Securities as specified by Tape A and Tape B securities. The Participants explain that this addition is intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(i) and (iii).²⁴

Section V. – The Processor and Competing Consolidators

The Proposed Amendments amend the title of Section V. to include competing consolidators, such that it is now titled “The Processor and Competing Consolidators,” and add new Section V.(f), Evaluation of Competing Consolidators, to require the Operating Committee to assess the performance of competing consolidators on an annual basis and to submit an annual report to the Commission containing the assessment. The Proposed Amendments require this annual report to include an analysis with respect to competing consolidators’ speed, reliability, and cost of data provision. The Participants explain that these additions are intended to comply with the requirements of Rule 614(e)(3).²⁵

In addition, the Proposed Amendments require the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).²⁶ Rule 614(d)(5) requires competing consolidators to publish on their websites monthly performance metrics as defined by the effective national

²⁴ See id.

²⁵ See Notice, supra note 7, 86 FR at 67801.

²⁶ 17 CFR 242.614(d)(5).

market system plan(s) for NMS stocks.²⁷ The Proposed Amendments add the following monthly performance metrics to this section:

- (i) Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;
- (ii) Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;
- (iii) System availability statistics, including system up-time percentage and cumulative amount of outage time;
- (iv) Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and
- (v) Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:
 - (A) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;
 - (B) When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and
 - (C) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

²⁷

Id.

Section VI. – Collection and Reporting of Quotation Information

The Proposed Amendments amend Section VI.(a), Responsibilities of Participants, to state that “[e]ach Participant agrees to collect, and furnish to the Processor in a format acceptable to the Operating Committee, all quotation information required to be made available by such Participant by Rules 602(b)(1) of Regulation NMS. Each Participant further agrees to collect and report to Competing Consolidators and Self Aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS, including all data necessary to generated consolidated market data.”

In addition, under the Proposed Amendments, Section VI.(a) states that each bid and offer with respect to an Eligible Security furnished to the Processor, competing consolidators and self-aggregators by any Participant pursuant to Plan would be accompanied by (i) the information required by Rules 602(b)(1) or 603(b) of Regulation NMS, as applicable, and (ii) the time of the bid or offer as identified by: (A) in the case of a national securities exchange, the reporting Participant's matching engine publication timestamp (reported in microseconds); or (B) in the case of a national securities association, the quotation publication timestamp that the association's bidding or offering member reports to the association's quotation facility in accordance with FINRA rules. Each bid and offer with respect to an Eligible Security furnished to competing consolidators and self-aggregators by any Participant must be accompanied by the time (reported in microseconds) the Participant made the bid and offer available to competing consolidators and self-aggregators.

With respect to national securities associations, under the Proposed Amendments, if a national securities association quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processor, competing consolidators,

and self-aggregators with the time of the quotation as published on the quotation facility's proprietary feed, and the national securities association shall convert any quotation times reported to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor, competing consolidators, and self-aggregators in microseconds. Additionally, Section VI.(a), as proposed to be amended, states, “Each bid and offer with respect to an Eligible Security made by a broker or dealer otherwise than on the floor of an exchange and furnished to the Processor, Competing Consolidators, and Self-Aggregators by any Participant which is a national securities association shall, at the time furnished, be accompanied by an appropriate symbol designated by the Operating Committee identifying such broker or dealer as required by paragraph (b)(i) of the Rule.”

The Proposed Amendments also amend Section VI.(b), Timeliness of Reporting, to add the following requirement: “Each Participant further agrees to furnish quotation information, and changes in any such information, to the Competing Consolidator[s] and Self-Aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.” The Participants explain that this addition is designed to comply with the requirements of Rule 614(e)(1).²⁸

²⁸ See Notice, *supra* note 7, 86 FR at 67801. The Participants state that they amended Sections VIII.(a) and (b) of the CQ Plan to add the requirement that each Participant agrees to collect and report to competing consolidators and self-aggregators all quotation data in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person. However, Commission staff believes they meant Section VI. instead of Section VIII. and such amendment is only present in proposed Section VI.(b) of the CQ Plan.

In addition, the Proposed Amendments amend Section VI.(c), High Speed Line and Market Identifiers, to remove a reference to an “ITS/CAES BBO” as excepted from the requirement that each bid or offer with respect to an Eligible Security furnished to the processor by a Participant that is a national securities association shall be accompanied by the symbol identifying the broker or dealer who was reported to the Processor as having made such bid or offer otherwise than on the floor of an exchange. The Participants explain that they propose to remove this reference because references to ITS/CAES are outdated.²⁹

The Proposed Amendments also amend Section VI.(e), Unusual Market Conditions, to include references to competing consolidators and self-aggregators and to remove a reference to Rule 602(b)(1)³⁰ and replace it with a reference to Rules 601(b)(1) and 603(b) of Regulation NMS. The Proposed Amendments also remove a reference to vendors in Section VI.(e).

Finally, the Proposed Amendments delete Section VI.(f), Description of Reporting Procedures, which requires each Participant and each other reporting party to prepare and submit to the Operating Committee and the Processor a description of the procedures by which it intends to comply with its obligations under the CQ Plan. The Participants explain that the provisions of Section VI.(f) are no longer relevant.³¹

Section VII. – Receipt and Use of Quotation Information

In Sections VII.(a), Requirements for Receipt and Use of Information, (b), Approvals of Redisseminators and Terminations of Approvals, and (c) Subscriber Terminations, the Proposed

²⁹ See Notice, *supra* note 7, 86 FR at 67801.

³⁰ Specifically, “paragraph (b)(1) of the Rule.” See *id.*, 86 FR at 67824.

³¹ See *id.*, 86 FR at 67801.

Amendments replace several references to a “CQ network’s quotation information” with the term “consolidated market data.”

The Proposed Amendments also amend Section VII.(a) to include references to competing consolidators and self-aggregators, such that, pursuant to fair and reasonable terms and conditions, each network’s administrator shall provide for: (i) the dissemination of each CQ network’s quotation information on terms that are not unreasonably discriminatory to competing consolidators and self-aggregators, and (ii) the use of that CQ network’s quotation information by competing consolidators and self-aggregators.

In addition, the Proposed Amendments amend Section VII.(a) to state that the Participants in both CQ networks expect that their network’s administrator will require the following parties to enter into agreements with the network’s administrator: (i) any party that receives consolidated market data by means of a direct computer-to-computer interface with the Processor or competing consolidators; (ii) any competing consolidator or self-aggregator that receives quotation information directly from a Participant for the purpose of creating consolidated market data; (iii) vendors and other parties that redisseminate consolidated market data; and (iv) persons that use consolidated market data for such purposes as the CQ network’s administrator may from time to time identify.

The Participants explain that the proposed revisions intend to make clear that the current market data contracts regarding the receipt of market data will be applicable to competing consolidators and self-aggregators.³² They believe that the change is consistent with Rule 614(e)(1) and is necessary, stating that competing consolidators and self-aggregators would be

³² See id.

receiving and using consolidated market data and should be subject to the same contracts applicable to vendors and subscribers.³³

The Proposed Amendments also amend Section VII.(b), Approvals of Redisseminators and Terminations of Approvals, to state that all vendors of and other parties that disseminate consolidated market data (“data disseminators”) shall be required to be approved by a CTA network’s administrator. Additionally, the Proposed Amendments amend Section XI.(c), Subscriber Terminations, to state that a network’s administrator may determine that circumstances warrant directing a data disseminator to cease providing consolidated market data to a subscriber, and that the CQ network’s Participants may direct the data disseminator to cease providing consolidated market data to the subscriber if a majority of those Participants determine that (i) such action is necessary or appropriate in the public interest or for the protection of investors, or (ii) the subscriber has breached any agreement required by the CTA network’s administrator pursuant to Section VII.

III. SUMMARY OF COMMENTS

In response to the Notice, the Commission received two comments on the Proposed Amendments.³⁴ Generally, both commenters oppose the Proposed Amendments and recommend that the Commission disapprove them.³⁵

³³ See id.

³⁴ See Letters to Vanessa Countryman, Secretary, Commission, from Ellen Greene, Managing Director, Equity and Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association (Dec. 17, 2021) (“SIFMA Letter”); Patrick Flannery, Chief Executive Officer, MayStreet, to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) (“MayStreet Letter”).

³⁵ SIFMA Letter, supra note 34, at 1, 8; MayStreet Letter, supra note 34, at 1. The Commission notes that the comment letters submitted by these commenters address both the Proposed Amendments and similar proposed amendments to the Fifty-First

Both commenters argue that the Proposed Amendments contain provisions that would be irrelevant under the decentralized consolidation model. Specifically, one commenter states that the Proposed Amendments appear to continue to contain the concept of a single processor in contravention of the MDI Rules Release.³⁶ The other commenter argues that under the MDI Rule, only competing consolidators would sell consolidated market data to vendors and subscribers. Therefore, this commenter does not believe the sections of the Proposed Amendment that discuss vendors' and subscribers' contractual relationships with the Plan are relevant.³⁷ The commenter recommends that these provisions be removed or altered to reflect that the Plans no longer have agreements with vendors and end users and instead will have agreements with competing consolidators and self-aggregators related specifically to the cost of content underlying the market data.³⁸

Both commenters also argue that the Proposed Amendments incorrectly treat competing consolidators in the same manner as market data vendors, despite Commission instruction to the contrary.³⁹ One of the commenters believes that subjecting competing consolidators to the same contractual requirements as data vendors and subscribers that receive consolidated market data from the exclusive SIP fails to recognize that competing consolidators are SIPs and not similarly

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. See Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021).

³⁶ SIFMA Letter, supra note 34, at 8.

³⁷ MayStreet Letter, supra note 34, at 3.

³⁸ See id.

³⁹ SIFMA Letter, supra note 34, at 4–5, 8; MayStreet Letter, supra note 34, at 3–5.

situated to today’s data vendors.⁴⁰ The commenter does not believe the contracts applicable to current data vendors will suffice for competing consolidators because the data that competing consolidators would receive from the Participants is content underlying consolidated data and different from the SIP data that data vendors receive.⁴¹ Additionally, the commenter states that not recognizing competing consolidators as SIPs would put competing consolidators at a competitive disadvantage to market data vendors given that they take on expenses and risks that data vendors do not – such as the costs to generate consolidated market data, disclosing operational and performance metrics, registering with the Commission, and complying with Rule 614 of Regulation NMS.⁴²

Separately, one commenter argues that validation procedures between competing consolidators and Participants should be similar to those between the current Processor and the Participants.⁴³ While this commenter acknowledges that the validation process for competing consolidators and Participants may differ from the current Processor validation process, the commenter believes that establishing validation procedures with the new competing consolidators that would be consistent across SROs is a prudent measure for ensuring data quality.⁴⁴ Finally, the commenter also believes that the Participants’ description of services

⁴⁰ MayStreet Letter, supra note 34, at 3–4. This commenter states that the Act requires competing consolidators to receive the data under terms that are not “unreasonably” discriminatory. Id. at 4.

⁴¹ See id. at 5.

⁴² See id.

⁴³ See id. at 4.

⁴⁴ See id.

offered by the current plans for equity market data have confused the underlying content of consolidated market data and the consolidated market data itself.⁴⁵

IV. PROCEEDINGS TO DETERMINE WHETHER TO APPROVE OR DISAPPROVE THE PROPOSED AMENDMENTS

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁴⁶ and Rule 700 of the Commission's Rules of Practice,⁴⁷ to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment. 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 Amendments to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission "shall approve a ... proposed amendment to 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 ... amendment 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."⁴⁸ Rule 608(b)(2) further provides that the Commission shall disapprove a proposed

⁴⁵ MayStreet Letter, supra note 34, at 3.

⁴⁶ 17 CFR 242.608.

⁴⁷ 17 CFR 201.700.

⁴⁸ See 17 CFR 242.608(b)(2).

amendment if it does not make such a finding.⁴⁹ Pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁵⁰ the Commission is providing notice of the grounds for disapproval under consideration:

- Whether the Proposed Amendments are consistent with the Commission’s MDI Rules as outlined in Rule 614(e)⁵¹;
- Whether, consistent with Rule 608 of Regulation NMS, the Proposed Amendments are 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 Act⁵²;
- Whether consistent with Rule 603(a) of Regulation NMS, the Proposed Amendments provide for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair and reasonable and not unreasonably discriminatory;
- Whether modifications to the Proposed Amendments, or conditions to their approval, would be required to make the Proposed Amendments 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 Act⁵³;

⁴⁹ See 17 CFR 242.608(b)(2).

⁵⁰ 17 CFR 242.608(b)(2)(i). See also Commission Rule of Practice 700(b)(2), 17 CFR 201.700(b)(2).

⁵¹ See MDI Rules Release, supra note 6.

⁵² See 17 CFR 242.608(b)(2).

⁵³ See id.

- Whether the Proposed Amendments are consistent with Congress’s finding, in Section 11A(1)(C)(iii) of the Act, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure “the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities”⁵⁴; and
- Whether, consistent with the purposes of Section 11A(c)(1)(B) of the Act,⁵⁵ the Proposed Amendments’ provisions are drafted, to support the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS securities, and the fairness and usefulness of the form and content of such information.

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.”⁵⁶ 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.⁵⁷ Any failure of the plan participants that filed the NMS plan filing 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 Act and the applicable rules and regulations thereunder.⁵⁸

⁵⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁵⁵ See 15 U.S.C. 78k-1(c)(1)(B).

⁵⁶ 17 CFR 201.700(b)(3)(ii).

⁵⁷ Id.

⁵⁸ Id.

V. 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 proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 11A or any other provision of the Act, or the rules and regulations thereunder. 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 consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁵⁹ any request for an opportunity to make an oral presentation.⁶⁰ The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendments,⁶¹ in addition to any other comments they may wish to submit about the Proposed Amendments. In particular, the Commission seeks comment on the following:

1. What are commenters' views on whether the Proposed Amendments reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators. For example, do commenters believe that Section I of the CTA Plan and Section I of the CQ Plan (both titled Definitions) appropriately define terms to accurately reflect the decentralized consolidation

⁵⁹ 17 CFR 242.608(b)(2)(i).

⁶⁰ 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).

⁶¹ See Notice, supra note 7.

model consistent with the MDI Rules Release? If not, what, if any, modifications should be made to these definitions in the Proposed Amendments? Additionally, do commenters believe that the Proposed Amendments should be modified to explicitly incorporate certain terms such as Consolidated Market Data, as defined in Rule 600(b)(19) into the Plan? Similarly, Section V of the CTA Plan and Section V of the CQ Plan (both titled The Processor and Competing Consolidators) describe the evaluation and functions of the Processor, respectively. Do commenters believe that modifying the Proposed Amendments to remove the role of the Processor is necessary for the decentralized consolidation model consistent with the MDI Rules Release?

2. What are commenters' views on whether the Proposed Amendments include the application of timestamps by the national securities exchange and national securities association participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated as applicable by the national securities exchange or national securities association and the time the national securities exchange or national securities association made such information available to competing consolidators and self-aggregators. Specifically, do commenters believe that the Proposed Amendments require the Participants to timestamp all of the data underlying Consolidated Market Data, as defined in Rule 600(b)(19), upon generation and upon provision to competing consolidators and self-aggregators? If not, should the Proposed Amendments be modified to include a requirement for such timestamping?

3. What are commenters' views on the absence of a microsecond timestamp requirement applicable to FINRA in Section VI.(c) (Consolidated Tape, Reporting Format and Technical Specifications) of the CTA Plan?

4. What are commenters' views on the proposed deletion of language in Section VIII.(a) (Collection and Reporting of Last Sale Data, Responsibility of Exchange Participants) of the CTA Plan stating, "CTA shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant." Specifically, do commenters believe that this Proposed Amendment should be modified to retain the language but replace the term "Processor" with "Competing Consolidators and Self-Aggregators"?

5. What are commenters' views on the following sections of the Proposed Amendments in light of the decentralized consolidation model under the MDI Rules: Section IX. (Receipt and Use of CTA Information) of the CTA Plan and Section VII. (Receipt and Use of Quotation Information) of the CQ Plan. Do commenters believe that the Proposed Amendments should be modified with respect to any of these sections to implement the decentralized consolidation model? If so, how? What are commenters' views on the use of the term "consolidated market data" in Section IX. of the CTA Plan? Do commenters agree with the statement by the Participants that the current market data contracts regarding the receipt of market data applicable to vendors and subscribers should be applicable to competing consolidators and self-aggregators?⁶² Do commenters interpret these provisions to mean that a network's administrator must approve a competing consolidator or self-aggregator before the competing consolidator or self-aggregator can receive data and can terminate such approval of a competing consolidator or self-aggregator?

6. What are commenters' views on whether the Proposed Amendments sufficiently describe how the Plans will operate under the Initial Parallel Operation Period when "the

⁶² See id., 86 FR at 67801.

decentralized consolidation model will run in parallel to the existing exclusive SIP model.”⁶³

Specifically, Section D of the Proposed Amendments states that Proposed Amendments will be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission. Do commenters believe that the Proposed Amendments should specify how the Participants will transition from the current Plan to the initial parallel operation period and the process after the initial parallel operation period?

7. What are commenters’ views on the Proposed Amendments in light of the decentralized consolidation model with respect to (i) references to the Processor, High speed line, and Subscribers; (ii) the dissemination of Regulatory Halts; (iii) the authority of the Operating Committee under Section IV.(d) of the CTA Plan and Section IV.(b) of the CQ Plan, respectively, with respect to operation of the Consolidated Tape System and Consolidated Quotation System; and (iv) references to contracts with Vendors and Subscribers. Do commenters believe that the Proposed Amendments should be modified with respect to any of these provisions in light of the decentralized consolidation model required by the MDI Rules?

8. What are commenters’ views on the following sections of the Proposed Amendments in light of the decentralized consolidation model: (i) CTA Plan: Parties, Administration of the CTA Plan, Potential Conflicts of Interest, The Processor and Competing Consolidators, Consolidated Tape, Collection and Reporting of Last Sale Data, Receipt and Use of CTA Information, Operational Matters, Financial Matters, Concurrent Use of Facilities, (ii) CQ Plan: Administration of this CQ Plan, The Processor and Competing Consolidators, Collection and Reporting of Quotation Information, Receipt and Use of Quotation Information, Operational Matters, Financial Matters, Concurrent Use of Facilities. Do commenters believe

⁶³ See MDI Rules Release, supra note 6, at Section III.H.2., 86 FR at 18698–701.

that the Proposed Amendments should be modified with respect to any of these sections, or any other section, in light of the decentralized consolidation model required by the MDI Rules? If so, please describe how the Proposed Amendments should be modified in light of the decentralized consolidation model required by the MDI Rules.

9. Do commenters have views about any other aspect of the Proposed Amendments? Do commenters believe that the Proposed Amendments should be modified in any other way to be consistent with the MDI Rules or the MDI Rules Release?

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. 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 No. SR-CTA/CQ-2021-02 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 No. SR-CTA/CQ-2021-02. 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 Internet 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the Participants' principal offices. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number File No. SR-CTA/CQ-2021-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁴

Jill M. Peterson
Assistant Secretary

⁶⁴ 17 CFR 200.30-3(a)(85).