SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101672; File No. 4-757)

November 20, 2024

Joint Industry Plan; Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data

I. INTRODUCTION

On October 23, 2023, Cboe BYX Exchange, Inc. ("Cboe BYX"), Cboe BZX Exchange, Inc. ("Cboe BZX"), Cboe EDGA Exchange, Inc. ("Cboe EDGA"), Cboe EDGX Exchange, Inc. ("Cboe EDGX"), Cboe Exchange, Inc., Investors Exchange LLC ("IEX"), Long Term Stock Exchange, Inc. ("LTSE"), MEMX LLC ("MEMX"), MIAX PEARL, LLC ("MIAX PEARL"), Nasdaq BX, Inc. ("Nasdaq BX"), Nasdaq ISE, LLC ("Nasdaq ISE"), Nasdaq PHLX LLC ("Nasdaq PHLX"), Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC ("NYSE American"), NYSE Arca, Inc. ("NYSE Arca"), NYSE Chicago, Inc. ("NYSE Chicago"), NYSE National, Inc. ("NYSE National"), and the Financial Industry Regulatory Authority, Inc. ("FINRA") (collectively, "SROs")[1] filed with the Securities and Exchange Commission ("Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Exchange Act")[2] and Rule 608 of Regulation National Market System ("Regulation NMS") thereunder,[3] a proposed new single national market system plan governing the public dissemination of real-time consolidated equity market data for national market system stocks (the

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1 For purposes of this order, the exchange group consisting of Cboe BYX, Cboe BZX, Cboe EDGA, Cboe EDGX, and Cboe Exchange, Inc., will be referred to collectively as "Cboe"; the exchange group consisting of Nasdaq BX, Nasdaq ISE, Nasdaq PHLX, and Nasdaq Stock Market LLC will be referred to collectively as "Nasdaq"; and the exchange group consisting of the New York Stock Exchange LLC, NYSE American, NYSE Arca, NYSE Chicago, and NYSE National will be referred to collectively as "NYSE."

2 15 U.S.C. 78k-1.

3 17 CFR 242.608.

"Proposed CT Plan"). The Proposed CT Plan was published for comment in the Federal Register on January 25, 2024.[4]

On April 23, 2024, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS[5] to determine whether to approve or disapprove the Proposed CT Plan or to approve the Proposed CT Plan with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or 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 Exchange Act.[6] On July 11, 2024, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[7] the Commission extended the period within which to conclude proceedings regarding the Proposed CT Plan to September 21, 2024.[8] On September 20, 2024, pursuant to Rule 608(b)(2)(ii) of Regulation

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4 See Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 99403 (Jan. 19, 2024), 89 FR 5002 (Jan. 25, 2024) ("Notice"). Comments received in response to the Notice can be found on the Commission's website at: https://www.sec.gov/comments/4-757/4-757.htm.

5 17 CFR 242.608(b)(2)(i).

6 See Joint Industry Plan; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 100017 (Apr. 23, 2024), 89 FR 33412 (Apr. 29, 2024) ("OIP"). Comments received in response to the OIP can be found on the Commission's website at: https://www.sec.gov/comments/4-757/4-757.htm.

7 17 CFR 242.608(b)(2)(i).

8 See Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on a Proposed National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 100500 (July 11, 2024), 89 FR 58235 (July 17, 2024).

NMS,[9] the Commission further extended the period within which to conclude proceedings regarding the Proposed CT Plan to November 20, 2024.[10]

This order approves the Proposed CT Plan with certain modifications that the Commission has determined are appropriate, which are described in detail below. As discussed throughout this order, the Commission finds that the Proposed CT Plan, as modified, is 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 mechanism of a national market system, or is otherwise in furtherance of the purposes of the Exchange Act. A copy of the Proposed CT Plan, marked to reflect the modifications the Commission has made, is Attachment A to this order.

II. DISCUSSION AND COMMISSION FINDINGS

A. Background

On May 6, 2020, the Commission ordered the SROs to act jointly in developing and filing with the Commission a proposed new national market system plan to govern the public dissemination of real-time, consolidated equity market data for NMS stocks to replace the existing equity data plans.[11] The Commission sought to address with the Governance Order,

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9 17 CFR 242.608(b)(2)(ii).

10 See Joint Industry Plan; Notice of Designation of a Longer Period for Commission Action on a Proposed National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 101125 (Sept. 20, 2024), 89 FR 78950 (Sept. 26, 2024).

11 See Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) (File No. 4-757) ("Governance Order"). The three NMS plans that currently govern the collection, consolidation, processing, and dissemination of equity market data for NMS stocks and oversee the securities information processors ("SIPs") for equity market data for NMS stocks are (1) the Consolidated Tape Association Plan ("CTA Plan"), (2) the Consolidated Quotation Plan ("CQ Plan"), and (3) 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 ("UTP Plan") (collectively, the "Equity Data Plans"). See id. at 28703, n.34.

among other things, the inherent conflicts of interest between the SROs' role in collecting and disseminating consolidated equity market data and their interests in selling proprietary data products. As the Commission stated in the Governance Order, since the adoption of Regulation NMS in 2005,

> developments in technology and changes in the equities markets have heightened an inherent conflict of interest between the Participants' collective responsibilities in overseeing the Equity Data Plans and their individual interests in maximizing the viability of proprietary data products that they sell to market participants. This conflict of interest, combined with the concentration of voting power in the Equity Data Plans among a few large "exchange groups"—multiple exchanges operating under one corporate umbrella—has contributed to significant concerns regarding whether the consolidated feeds meet the purposes for them set out by Congress and by the Commission in adopting the national market system. Additionally, the Commission believes that the continued existence of three separate NMS plans for equity market data creates inefficiencies and unnecessarily burdens ongoing improvements in the provision of equity market data to market participants. Addressing the issues with the current governance structure of the Equity Data Plans … is a key step in responding to broader concerns about the consolidated data feeds.[12]

Moreover, as stated in the Governance Order, "[t]he Commission believes that the demutualization of the exchanges and the proliferation of proprietary exchange data products have heightened the conflicts between the SROs' business interests in proprietary data offerings and their obligations as SROs under the national market system to ensure prompt, accurate, reliable, and fair dissemination of core data through the jointly administered Equity Data Plans."[13]

Thus, the Commission determined that the current governance structure of the existing Equity Data Plans is "inadequate to respond to changes in the market and in the ownership of exchanges, and to the evolving needs of investors and other market participants,"[14] and the

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12 Governance Order, supra note 11, 85 FR at 28702.

13 Id. at 28704.

14 Id. at 28702.

Commission ordered the SROs to develop and file with the Commission a proposed new NMS plan regarding equity market data with a set of specified governance provisions designed to address the issues identified by the Commission,[15] and to ensure, consistent with the Exchange Act, the "prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information."[16]

On August 11, 2020, the SROs[17] filed a proposed new NMS plan pursuant to the Governance Order, and notice of the proposed plan was published for comment in the Federal Register on October 13, 2020.[18] After instituting proceedings with respect to the new NMS plan proposed by the SROs, the Commission ultimately approved, as modified, the new NMS plan on August 6, 2021 ("2021 CT Plan").[19]

Nasdaq, NYSE, and Cboe then petitioned the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") for review of the Commission's action, challenging three aspects of the Governance Order and the 2021 Approval Order: (1) the inclusion of non-SRO representatives as voting members of the 2021 CT Plan's operating committee; (2) the grouping

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15 See id. at 28729-31.

16 15 U.S.C. 78k-1(c)(1)(B).

17 MIAX PEARL was not among the SROs filing that proposed plan because it did not become national securities exchange for trading equity securities until after that filing was made. See Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Rules Governing the Trading of Equity Securities, Securities Exchange Act Release No. 89563 (Aug. 14, 2020), 85 FR 51510 (Aug. 20, 2020).

18 See Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 90096 (Oct. 6, 2020), 85 FR 64565 (Oct. 13, 2020) (File No. 4-757).

19 See Joint Industry Plan; Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (File No. 4-757) ("2021 Approval Order").

of SROs by corporate affiliation for voting; and (3) the requirement that the 2021 CT Plan's administrator be independent of any SRO that sells its own proprietary equity market data.[20]

On July 5, 2022, the D.C. Circuit granted the exchanges' petition with respect to the inclusion of non-SRO voting members on the new NMS plan operating committee, but denied the petition with respect to the other challenged aspects of the Governance Order and the 2021 Approval Order, including upholding the Commission's actions with respect to requiring voting by SRO group and requiring an independent administrator.[21] The court vacated the 2021 Approval Order in full, but "sever[ed] only those parts of the Governance Order directing [the SROs] to include non-SRO representation in its proposed plan, leaving the remainder in place."[22]

On September 1, 2023, in light of the court's decision, the Commission issued an amended order directing the SROs to file a new NMS plan regarding consolidated equity market data,[23] and the SROs filed the Proposed CT Plan pursuant to that Amended Governance Order.[24]

Below, this order separately addresses each of the provisions of the Proposed CT Plan, discussing the comments received and explaining the modifications, if any, that the Commission is making.

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20 See The Nasdaq Stock Market LLC, et al. v. Securities and Exchange Commission, 38 F.4th 1126, 1131 (D.C. Cir. 2022) ("Nasdaq v. SEC"). The petitioners were Nasdaq, NYSE, and Cboe. The petitioners also filed a motion with the Commission seeking a stay of the effect of the 2021 Approval Order pending final resolution of their petitions before the D.C. Circuit, which the Commission denied. See Order Denying Stay, Securities Exchange Release No. 93051 (Sept. 17, 2021), 86 FR 52933 (Sept. 23, 2021) (File No. 4-757). The petitioners also filed for and, on October 13, 2021, received a stay of the 2021 Approval Order from the D.C. Circuit. See Nasdaq v. SEC, 38 F.4th at 1135.

21 See Nasdaq v. SEC, supra note 20, 38 F.4th at 1131.

22 Id. at 1145.

23 Amended Order Directing the Exchanges and the Financial Industry Regulatory Authority, Inc., to File a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 98271 (Sept. 1, 2023), 88 FR 61630, 61631 (Sept. 7, 2023) (File No. 4-757) ("Amended Governance Order").

24 See Notice, supra note 4, 89 FR at 5003.

B. The Provisions of the Proposed CT Plan

1. Recitals

Paragraph (a) of the Recitals states the procedural history of the Proposed CT Plan. Paragraph (a) of the Recitals also establishes that the Proposed CT Plan is filed with the Commission in response to the Commission's Amended Governance Order.[25]

Paragraph (b) of the Recitals states that, as the Members have already formed the Company[26] as a limited liability company pursuant to the Delaware Limited Liability Company Act[27] by filing a certificate of formation with the Delaware Secretary of State, the Proposed CT Plan will become effective on the date (the "Effective Date") when approved by the Commission pursuant to Rule 608 of Regulation NMS as an NMS plan governing the public dissemination of real-time consolidated market data for Eligible Securities.[28]

Paragraph (c) of the Recitals sets forth the SROs' statement of their regulatory obligations to the Proposed CT Plan. Specifically, paragraph (c) states that, in performing their obligations and duties under the Proposed CT Plan, the Members are performing and discharging functions and responsibilities related to the operation of the national market system for and on behalf of the Members in their capacities as self-regulatory organizations, as required under section 11A of the Exchange Act, and pursuant to Rule 603(b) of Regulation NMS thereunder. Paragraph (c) of the Recitals further provides that the Proposed CT Plan and the operations of the

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25 See Paragraph (a) of the Recitals of the Proposed CT Plan.

26 For purposes of this order, all capitalized terms not otherwise defined in this order shall have the same meaning as in the Proposed CT Plan.

27 See Article I, Section 1.1(21) of the Proposed CT Plan (as approved) (defining "Delaware Act" as "the Delaware Limited Liability Company Act, Title 6, Chapter 18, §§ 18-101, et seq., and any successor statute, as amended").

28 See Paragraph (b) of the Recitals of the Proposed CT Plan. Upon approval by the Commission, the Proposed CT Plan will be an "effective national market system plan" within the meaning of Rule 600(b)(34) of Regulation NMS, 17 CFR 242.600(b)(34), and an "effective transaction reporting plan," within the meaning of Rule 600(b)(35) of Regulation NMS, 17 CFR 242.600(b)(35).

Company shall be subject to ongoing oversight by the Commission.[29] Finally this paragraph of the Recitals sets forth that no provision of the Proposed CT Plan shall be construed to limit or diminish the obligations and duties of the Members as self-regulatory organizations under the federal securities laws and the regulations thereunder.[30]

The Commission is making a non-substantive modification to paragraph (b) to add the defined term "Plan" at the end of the phrase "an NMS plan governing the public dissemination of real-time consolidated market data for Eligible Securities." This modification is appropriate because the Proposed CT Plan contains numerous references to the "plan," which term had not been defined. Apart from this modification, the Recitals are substantively similar to corresponding recitals of the 2021 CT Plan approved by the Commission[31] and were not required to be modified by the Amended Governance Order. The Commission received no comments addressing paragraphs (a), (b), and (c) of the Recitals of the Proposed CT Plan, and the Commission is approving the Recitals as modified.

2. Definitions

Article I of the Proposed CT Plan sets forth the defined terms used throughout, as well as provisions for interpreting, the Proposed CT Plan and its Exhibits.[32]

(a) Section 1.1 Definitions

While the Commission received no comments on the proposed definitions, it is, as explained below, making certain modifications to the proposed definitions.

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29 See Paragraph (c) of the Recitals of the Proposed CT Plan.

30 See Paragraph (b) of the Recitals of the Proposed CT Plan. The "Members" of the Agreement, as defined in the first paragraph of the Agreement, are the SROs identified in Exhibit A to the Agreement.

31 See 2021 Approval Order, supra note 19, 86 FR at 44143-49 (approving Paragraph (a) of the Recitals of the 2021 CT Plan, as proposed, Paragraph (b) of the Recitals of the 2021 CT Plan, as modified, and Paragraph (g) of the Recitals of the 2021 CT Plan as modified).

32 See Article I, Sections 1.1 and 1.2 of the Proposed CT Plan.

The Commission is modifying the definition of "Administrator" to delete text that incompletely duplicates part of the provisions of Article VI, Section 6.2 of the Proposed CT Plan as modified and instead refer directly to Article VI of the Proposed CT Plan. Specifically, the Commission is revising the definition to read, "'Administrator' means the Person selected by the Company to perform the administrative functions under Article VI of this Agreement." This modification is appropriate to avoid potential ambiguity between the terms of the definition as proposed and the provisions of Article VI as modified by the Commission, in particular the text of Section 6.2 of the Agreement regarding the independence of the Administrator, as modified by the Commission.[33]

The Commission is modifying Section 1.1 to add a new paragraph (2) to define the term "Advisory Committee" to mean "the committee formed in accordance with Section 4.7 of this Agreement."[34] This modification is appropriate because the term "Advisory Committee" is used throughout the Proposed CT Plan but was undefined. The Commission is further modifying Section 1.1 to renumber the following paragraphs of Section 1.1 accordingly.

The Commission is modifying the definitions of "Company Identified Party," "Covered Persons," "Executive Session," and "Party to a Proceeding" to delete the acronym "SRO" from the term "SRO Voting Representative." These modifications are appropriate because the defined term proposed in the Proposed CT Plan is "Voting Representative" rather than "SRO Voting Representative."[35]

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33 See infra Section II.B.7(b).

34 See Section 1.1(2) of the Proposed CT Plan (as approved). The Commission has also renumbered the paragraphs of Section 1.1 to reflect this addition.

35 See Article I, Section 1.1(83) of the Proposed CT Plan (as approved) (defining "Voting Representative").

The Commission is modifying the definition of "Agent" to insert, immediately after the words "the Administrator," the words "the Interim Administrator(s)." The Commission is also modifying the definition of "Covered Persons" to insert in two places immediately following the words "the Administrator," the words "the Interim Administrator(s)."[36] These modifications are appropriate because, as discussed below in Section II.B.7 of this order, the Commission is modifying the Proposed CT Plan to permit the appointment by the Operating Committee of one or more Interim Administrator(s), and these insertions are needed to conform to that modification.

The Commission is modifying the definition of "Highly Confidential Information" to specify that "Highly Confidential Information" shall also include the Company's contract negotiations with the Interim Administrator(s).[37] This modification is appropriate because the Company's contract negotiations with the Interim Administrator(s) would raise confidentiality concerns similar to those of the Company's contract negotiations with the Administrator, which require classification as Highly Confidential Information under the confidentiality provisions of the Proposed CT Plan. The Commission is further modifying the definition of "Highly Confidential Information"[38] to delete the word "applicable" and insert, immediately after the words "privilege or immunity" the words "recognized under Applicable Law." This modification is appropriate to place clear limits around the circumstances in which sharing of information with

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[36] As modified, Section 1.1(14) provides that the term "Covered Persons" means "representatives of the Members (including the Voting Representative, alternate Voting Representative, and Member Observers), members of the Advisory Committee, SRO Applicants, SRO Applicant Observers, the Administrator, the Interim Administrator(s), and the Processors; Affiliates, employees, and Agents of the Operating Committee, a Member, the Administrator, the Interim Administrator(s), and the Processors; and any third parties invited to attend meetings of the Operating Committee or subcommittees. Covered Persons do not include staff of the SEC."

[37] To effect this modification, the Commission is inserting, immediately after "Administrator" the words "or Interim Administrator(s)." See Section 1.1(35) of the Proposed CT Plan (as approved).

[38] See Article I, Section 1.1(35) of the Proposed CT Plan (as approved).

Advisory Committee members will be restricted under the Confidentiality Policy by requiring that the "privilege or immunity" under which information may be designated as Highly Confidential Information must be a "privilege or immunity recognized under Applicable Law," which is a term defined in Section 1.1 of the Proposed CT Plan.[39]

The Commission is modifying the definition of "Operative Date" to insert, immediately after "Exchange Act," the words "and the rules and regulations thereunder." This modification is appropriate to help ensure that this provision more broadly encompasses all of the laws and regulations governing the regulatory functions to be performed by the Members through the Proposed CT Plan. The proposed and approved definition of "Operative Date" also differs from that approved by the Commission in the 2021 CT Plan[40] in that it specifies the two major conditions required to be fulfilled before the Proposed CT Plan has been fully implemented. This change is appropriate because it ties the definition of Operative Date to the accomplishment of key milestones.

Except as described above (and with respect to the removal of provisions regarding non-SRO representatives, as required by the Amended Governance Order[41]), the definitions in Section 1.1 are identical to the corresponding definitions in the 2021 CT Plan approved by the Commission,[42] and were not required to be modified by the Amended Governance Order. The

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39 See infra Section II.B.5(l) (discussing the Confidentiality Policy set forth in Article IV, Section 4.12 of and Exhibit C to the Proposed CT Plan).

40 See 2021 Approval Order, supra note 19, 86 FR at 44207.

41 See Amended Governance Order, supra note 23, 88 FR at 61631 ("In accordance with the D.C. Circuit's ruling, the Commission is modifying the Governance Order to remove the provisions regarding the participation of non-SRO representatives as members of the operating committee of the Revised New Consolidated Data Plan and to make conforming changes.").

42 See 2021 Approval Order, supra note 19, 86 FR at 44149-50, 44207-10.

Commission received no comments on Article I, Section 1.1 of the Proposed CT Plan, and the Commission is approving Article I, Section 1.1 of the Proposed CT Plan as modified.

(b) Section 1.2 Interpretation

Section 1.2 of the Proposed CT Plan provides rules for the interpretation of terms used in the Proposed CT Plan. This provision is identical to the corresponding plan provisions of the 2021 CT Plan approved by the Commission[43] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Section 1.2, and the Commission is approving Section 1.2 as proposed.

3. Organization

Article II of the Proposed CT Plan sets forth provisions governing the organization of the Company. The SROs have organized the Proposed CT Plan in the form of a Delaware limited liability company pursuant to a limited liability company agreement, entitled the Limited Liability Company Agreement ("Agreement") of CT Plan LLC ("Company").[44] The Members of the Company will be the national securities exchanges for equities and FINRA,[45] each of which will be a "Participant" of the Proposed CT Plan as an effective NMS plan for the dissemination of consolidated equity market data.

The Proposed CT Plan states that the purposes of the Company are to engage in the following activities on behalf of the Members: (i) the collection, consolidation, and dissemination of Transaction Reports, Quotation Information, and such other information concerning Eligible Securities as the Members shall agree as provided therein; (ii) contracting

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43 See 2021 Approval Order, supra note 19, 86 FR at 44210.

44 See Article II, Section 2.1 of the Proposed CT Plan.

45 See Article III, Section 3.1 of the Proposed CT Plan. The names and addresses of each Member are set forth in Exhibit A to the Proposed CT Plan.

for the distribution of such information; (iii) contracting for and maintaining facilities to support any activities permitted in the Agreement and guidelines adopted thereunder, including the operation and administration of the System;[46] (iv) providing for those other matters set forth in the Agreement and in all guidelines adopted thereunder; (v) operating the System to comply with Applicable Laws; and (vi) engaging in any other business or activity that now or thereafter may be necessary, incidental, proper, advisable, or convenient to accomplish any of the foregoing purposes and that is not prohibited by the Delaware Act, the Exchange Act, or other Applicable Law.[47] The Agreement itself, including its appendices, constitutes the Proposed CT Plan. Under the Proposed CT Plan, the governing body of the Company would be the Operating Committee.[48]

Article II of the Proposed CT Plan is identical to the corresponding plan provisions of the 2021 CT Plan approved by the Commission[49] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Article II of the Proposed CT Plan, and the Commission is approving Article II of the Proposed CT Plan as proposed for the same reasons stated in the 2021 Approval Order.[50]

4. Membership

Article III of the Proposed CT Plan sets forth provisions relating to membership in the Company. Pursuant to Article III, Section 3.2(a) of the Proposed CT Plan, any national securities

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46 Section 1.1(75) of Article I of the Proposed CT Plan defines the term "System" as "all data processing equipment, software, communications facilities, and other technology and facilities, utilized by the Company or the Processors in connection with the collection, consolidation, and dissemination of Transaction Reports, Quotation Information, and other information concerning Eligible Securities."

47 See Article II, Section 2.4 of the Proposed CT Plan.

48 See Article IV, Section 4.1(a) of the Proposed CT Plan.

49 See 2021 Approval Order, supra note 19, 86 FR at 44150-52.

50 Id.

association or national securities exchange whose market, facilities, or members, as applicable, trades Eligible Securities[51] may become a Member by (i) providing written notice to the Company; (ii) executing a joinder to the Agreement; (iii) paying a Membership Fee to the Company as determined pursuant to Section 3.2(b) ("Membership Fee"); and (iv) executing a joinder to any other agreements to which all of the other Members have been made party in connection with being a Member.[52] Membership Fees paid will be added to the general revenues of the Company.[53]

Article III, Section 3.2 of the Proposed CT Plan specifies that the factors that will be considered in determining a Membership Fee are: (1) the portion of costs previously paid by the Company (or by the Members prior to the formation of the Company) for the development, expansion and maintenance of the System which, under generally accepted accounting principles ("GAAP"), would have been treated as capital expenditures and would have been amortized over the five years preceding the admission of the new member; and (2) an assessment of costs incurred and to be incurred by the Company for modifying the System or any part thereof to accommodate the new member, which costs are not otherwise required to be paid or reimbursed by the new Member.[54] The Proposed CT Plan prohibits a Member's transfer of its Membership Interest in the Company, except in connection with the withdrawal of a Member from the Company, as discussed below.[55]

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51 See Article I, Section 1.1(23) of the Proposed CT Plan (as approved) (defining "Eligible Security" as "(i) any equity security, as defined in Section 3(a)(11) of the Exchange Act, or (ii) a security that trades like an equity security, in each case that is listed on a national securities exchange").

52 See Article III, Section 3.2(a) of the Proposed CT Plan.

53 See Article III, Section 3.2(a) of the Proposed CT Plan.

54 See Article III, Section 3.2(b) of the Proposed CT Plan. The Proposed CT Plan provides that Participants of the CQ Plan, CTA Plan, and UTP Plan are not required to pay the Membership Fee. See Article III, Section 3.2(c) of the Proposed CT Plan.

55 See Article III, Section 3.3 of the Proposed CT Plan.

Pursuant to Article III, Section 3.4, any Member may voluntarily withdraw from the Company by: (i) providing not less than 30 days' prior written notice of such withdrawal to the Company, (ii) causing the Company to file with the Commission an amendment to effectuate the withdrawal,[56] and (iii) transferring such Member's Membership Interest to the Company.[57] If a Member ceases to be a registered national securities association or registered national securities exchange, that Member automatically withdraws from the Company.[58] Section 3.4 further provides that after withdrawal from Membership, the Member will remain liable for any obligations arising prior to withdrawal.[59] A withdrawing Member is entitled to receive a portion of the Net Distributable Operating Income attributable to the period prior to the Member's withdrawal.[60]

Pursuant to proposed Sections 3.4(d)(iii) and (iv), a Member that has withdrawn from the Company will no longer have the right to have its Transaction Reports, Quotation Information, or other information disseminated over the System, and the Capital Account of that Member will not be allocated profits and losses of the Company.

Article III, Section 3.5 of the Proposed CT Plan provides that a Member's bankruptcy under Section 18-304 of the Delaware Act shall not itself cause a withdrawal of such Member from the Company, so long as such Member continues to be a national securities association or national securities exchange. As proposed, Section 3.6 provides that, following the Operative

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56 See Article III, Section 3.4(a) of the Proposed CT Plan.

57 See Article III, Section 3.4(a) of the Proposed CT Plan.

58 See Article III, Section 3.4(b) of the Proposed CT Plan.

59 See Article III, Section 3.4(d)(i) of the Proposed CT Plan.

60 See Article III, Section 3.4(d)(ii) of the Proposed CT Plan.

Date, each Member will be required to comply with the provisions of the Proposed CT Plan and enforce compliance with the Proposed CT Plan by its members.[61]

Article III of the Proposed CT Plan also sets forth the obligations and liabilities of the Members. Article III, Section 3.7 provides that Members will not be required to contribute capital or make loans to the Company, nor will Members have any liability for the debts and liabilities of the Company.[62] This section also states that it is the intent of the Members that no distribution to any Member pursuant to the Company Agreement will be considered a return of money or other property paid or distributed in violation of the Delaware Act, and that any such payment will be considered a compromise within the meaning of Delaware Act, and the Member receiving any payment will not be required to return any payment to any person, provided that a Member will be required to return any payment made due to a clear accounting or similar error or as otherwise provided in Section 3.7(b).[63] In addition, Article III of the Proposed CT Plan provides that no Member, unless authorized by the Operating Committee, has the authority to represent the Company or to make any expenditure on behalf of the Company; provided, however, that the Tax Matters Partner may represent, act for, sign for or bind the Company as permitted under Sections 10.2 and 10.3 of the Agreement.[64] Finally, Section 3.7(e) provides that

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61 See Article III, Section 3.6 of the Proposed CT Plan.

62 See Article III, Section 3.7(a)-(b) of the Proposed CT Plan. However, in the event that the Processors or the Administrator have not been paid pursuant to the terms of the Processor Services Agreements and Administrative Services Agreement, the Proposed CT Plan requires each Member to return to the Company its pro rata share of any moneys distributed to it by the Company until an aggregated amount equal to the amount owed has been recontributed to the Company. The Company will pay the amount(s) owed. See Article III, Section 3.7(b) of the Proposed CT Plan.

63 See Article III, Section 3.7(c) of the Proposed CT Plan. The Proposed CT Plan further provides that if any court of competent jurisdiction holds that any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of the Operating Committee. See id.

64 See Article III, Section 3.7(d) of the Proposed CT Plan.

no Member owes any duty (fiduciary or otherwise) to the Company or to any other Member other than the duties expressly set forth in the Agreement.[65]

The Commission is modifying Section 3.6 to replace the "Operative Date" with "Effective Date" as that term is defined in the Recitals. This change is appropriate because the Effective Date of the Agreement is the date it is approved by the Commission, whereas the Operative Date is defined as the date that Members conduct, through the Company, the Processor and Administrator functions related to the public dissemination of real-time consolidated equity market data and the Equity Data Plans cease their operations. This modification will facilitate the implementation of the Proposed CT Plan as, pursuant to Article XIV of the approved plan, the obligation of each Member to comply with the provisions of the Agreement and enforce compliance by its members shall begin when the Agreement is approved.

Aside from the modification to Section 3.6, Article III is, with immaterial differences, identical to the corresponding provisions of the 2021 CT Plan approved by the Commission[66] and was not required to be modified by the Amended Governance Order. The Commission received no comments on Article III of the Proposed CT Plan, and the Commission is approving Article III of the Proposed CT Plan as modified for the same reasons stated in the 2021 Approval Order.[67]

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65 See Article III, Section 3.7(e) of the Proposed CT Plan.

66 See 2021 Approval Order, supra note 19, 86 FR at 44152-54, 44211-12. With respect to proposed Article III of the Proposed CT Plan, the differences between the language of the 2021 CT Plan approved by the Commission in the 2021 Approval Order and that of the Proposed CT Plan as proposed are the substitution of the word "will" for the word "are" in Section 3.2(c) as proposed and the paragraph numbering in Section 3.4(d) as proposed.

67 Id.

5. Management of the Company

Article IV of the Proposed CT Plan establishes the overall governance structure for the management of the Company.

(a) Operating Committee

As an initial matter, Section 4.1 of the Proposed CT Plan has a typographical error in that the subsections are numbered in Section 4.1 as (f), (g), and (h), rather than (a), (b), and (c). Accordingly, the Commission is modifying the Proposed CT Plan to correct this typographical error, and, for ease of reading, all further references to Section 4.1 will be to the paragraphs as renumbered. These modifications are appropriate because they would alleviate confusion on those referencing the Proposed CT Plan.

Article IV, Section 4.1(a) provides that the Company be managed by the Operating Committee.[68] Article IV, Section 4.1(a) also provides that the Operating Committee has the authority to take actions it deems necessary to accomplish the purposes of the Company, including: (1) proposing amendments or implementing policies and procedures;[69] (2) selecting, overseeing, specifying the role and responsibilities of, and evaluating the performance of the Administrator, the Processor, an auditor, and any other professional service providers;[70] (3) developing fair and reasonable fees and consistent terms for Transaction Reports and Quotation Information;[71] (4) reviewing the performance of the Processors and ensuring public

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68 See Article IV, Section 4.1(a) of the Proposed CT Plan. This paragraph further provides that unless otherwise expressly provided to the contrary in this Agreement, no Member shall have authority to act for, or to assume any obligation or responsibility on behalf of, the Company, without the prior approval of the Operating Committee. See id.

69 See Article IV, Section 4.1(a)(i) of the Proposed CT Plan.

70 See Article IV, Section 4.1(a)(ii) of the Proposed CT Plan.

71 See Article IV, Section 4.1(a)(iii) of the Proposed CT Plan (providing that that the Operating Committee has the authority to take actions it deems necessary to accomplish the purposes of the Company, including "developing and maintaining fair and reasonable Fees and consistent terms for the distribution,

reporting of the Processors' performance and other metrics and information about the processors;[72] (5) assessing the marketplace for equity data products and ensuring that the CT Feeds are priced in a manner that is fair and reasonable, and designed to ensure the widespread availability of CT Feeds data to investors and market participants;[73] (6) designing a fair and reasonable formula to be applied by the Administrator for allocating plan revenues, and overseeing, reviewing, and revising the formula as needed;[74] (7) interpreting the Agreement and its provisions;[75] and (8) carrying out other specific responsibilities provided for in the Agreement.[76]

Section 4.1(b) proposes to permit the Operating Committee to delegate all or part of its administrative functions under the Proposed CT Plan, excluding those administrative functions to be performed by the Administrator pursuant to Section 6.1, to (1) a subcommittee; (2) one or more of the Members; or (3) any other Persons (including the Administrator),[77] provided that a delegation would not convey the authority to take action on behalf of the Proposed CT Plan.[78] And Section 4.1(c) provides that neither the Company nor the Operating Committee will have authority over any Member's proprietary systems or the collection and dissemination of

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transmission, and aggregation of Transaction Reports and Quotation Information in Eligible Securities"). See id.

72 See Article IV, Section 4.1(a)(iv) of the Proposed CT Plan.

73 See Article IV, Section 4.1(a)(v) of the Proposed CT Plan.

74 See Article IV, Section 4.1(a)(vi) of the Proposed CT Plan.

75 See Article IV, Section 4.1(a)(vii) of the Proposed CT Plan.

76 See Article IV, Section 4.1(a)(viii) of the Proposed CT Plan.

77 The limitations on the Operating Committee's authority to delegate those administrative functions to be performed by the Administrator pursuant to Section 6.1, to (1) a subcommittee; (2) one or more of the Members; or (3) any other Persons (including the Administrator) under Section 4.1(b) of the Proposed CT Plan apply equally with respect to those administrative functions to be performed by the Interim Administrator(s) appointed pursuant to Section 6.5 of the Proposed CT Plan.

78 See Article IV, Section 4.1(b) of the Proposed CT Plan.

quotation or transaction information in Eligible Securities in any Member's Market, or, in the case of FINRA, from FINRA Participants. Section 4.1 as proposed and approved differs from the corresponding provision of the 2021 CT Plan approved by the Commission in two ways. First, in lieu of the term "core data" in Section 4.1(a)(iii) of the 2021 CT Plan, the Proposed CT Plan uses the phrase "Transaction Reports and Quotation Information in Eligible Securities." Second, Section 4.1(b) as proposed and approved removes a reference to Non-SRO Voting Representatives, which is consistent with the Amended Governance Order.[79]

One commenter states that the Commission should "encourage the Revised CT Plan to consider" whether current policies of the Equity Data Plans, "such as those surrounding non-display use reporting and professional versus non-professional designations, are necessary or merely add unnecessary complexity and confusion."[80] The commenter states that a "benefit of transparent, simple, fee schedules and policies governing consolidated equity market data is that they [would] also likely reduce the scope of services that the Plan Administrator would need to provide to the Revised CT Plan, thereby reducing Plan costs."[81] Another commenter states that the policies for the Proposed CT Plan "must be improved" from those of the Equity Data Plans.[82] This commenter states that "there must be greater transparency in the various stages of the workstreams and alternative views considered" and that the "seemingly rent-seeking behavior that has plagued the Existing Plans must be addressed, and every aspect surrounding the

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79 See Amended Governance Order, supra note 23, 88 FR at 61631 ("In accordance with the D.C. Circuit's ruling, the Commission is modifying the Governance Order to remove the provisions regarding the participation of non-SRO representatives as members of the operating committee of the Revised New Consolidated Data Plan and to make conforming changes.").

80 Letter from Krista Ryan, SVP, Deputy General Counsel and Holly Grotnik, Head of Consolidated Data Services, Fidelity Investments, at 5 (Feb. 26, 2024) ("Fidelity Letter") at 5.

81 Id.

82 Letter from Stan Sater, Legal Counsel, Polygon.io, Inc. (Feb. 26, 2024) ("Polygon Letter"), at 1.

governance and administration of Consolidated Data must be reimagined."[83] Another commenter suggests that, in developing policies, consideration should be given to "invit[ing] potential RFP respondents to present their thoughts on issues and potential solutions for the new plan."[84]

With respect to the comments addressing the policies to be developed for the Proposed CT Plan, including comments suggesting that such policies should improve upon those of the Equity Data Plans with respect to their complexity, effectiveness, and transparency,[85] and for the participants to the Proposed CT Plan to consider whether such policies are necessary,[86] these comments provide insufficient detail with respect to the measures or specific plan language that, in the commenters' views, would be necessary to address the commenters' concerns. Additionally, the requirements of the Proposed CT Plan, as proposed and approved, provide appropriate guidelines for the development and implementation of such policies. For example, the Proposed CT Plan, as proposed and approved, requires that the Operating Committee implement "policies and procedures as necessary to ensure prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to Transaction Reports and Quotation Information in Eligible Securities and the fairness and usefulness of the form and content of that information."[87] Moreover, any plan policies or operational interpretations adopted by the Operating Committee must be consistent with the terms of the Plan.

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83 Id. at 2.

84 Letter from Thomas Jordan, President, Jordan & Jordan, at 2 (June 12, 2024) ("Jordan Letter").

85 See Fidelity Letter, supra note 80, at 5; Polygon Letter, supra note 82, at 1.

86 See Fidelity Letter supra note 80, at 5.

87 Article IV, Section 4.1(a)(1) of the Proposed CT Plan (as approved).

With respect to the concerns based on the commenters' experience with the Equity Data Plans as it relates to equity market data or plan policies in general,[88] these commenters provide insufficient detail with respect to the measures that, in the commenters' views, are necessary to address the expressed concerns. Regarding the plan policies to be developed, the Proposed CT Plan includes specified provisions designed to, among other things, address the governance concerns identified by the Commission with respect to the governance of the Equity Data Plans.[89] Implementing the governance reforms in the Proposed CT Plan, as approved in this order, is a key step in responding to broader concerns about whether the Equity Data Plans continue to serve their regulatory purpose.[90] These changes, including, as approved in this order, a reallocation of voting power,[91] broader representation from members of the Advisory Committee,[92] as well as the appointment of an Administrator meeting the independence requirements of Section 6.2 of the Proposed CT Plan,[93] should, when combined into a single new

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88 See Fidelity Letter, supra note 80, at 5; Polygon Letter, supra note 82, at 1-2.

89 See Amended Governance Order, supra note 23, 88 FR at 61631. In the Governance Order, "[t]he Commission sought to address …, among other things, the inherent conflicts of interest between the self-regulatory organizations' role in collecting and disseminating consolidated equity market data and their interests in selling proprietary data products." See 2021 Approval Order, supra note 19, 86 FR at 44142. See also Governance Order, supra note 11 ("[T]he Commission believes that the demutualization of the exchanges and the proliferation of proprietary exchange data products have heightened the conflicts between the SROs' business interests in proprietary data offerings and their obligations as SROs under the national market system to ensure prompt, accurate, reliable, and fair dissemination of core data through the jointly administered Equity Data Plans. And these conflicts bear on the exchanges' incentives to meaningfully improve the provision of core data.") (citations omitted)).

90 See Governance Order, supra note 11, 85 FR at 28705 (citing to Securities Exchange Act Release No. 87906 (Jan. 8, 2020), 85 FR 2164, 2173 (Jan. 14, 2020) (File No. 4-757).

91 See Article IV, Section 4.3 (establishing requirements for action of the Operating Committee of the Proposed CT Plan).

92 See Article IV, Section 4.7 of the Proposed CT Plan (governing, among other things, the formation, composition, function, and rights of the Advisory Committee of the Proposed CT Plan).

93 See Article VI, Section 6.2 of the Proposed CT Plan (governing independence requirements for the Administrator of the Proposed CT Plan).

NMS plan, significantly enhance the governance of the Proposed CT Plan.[94] They should also facilitate enhanced decision-making and innovation in the provision of equity market data, including with respect to the development of plan-related policies. Additionally, replacing the Equity Data Plans' two current administrators with the single independent Administrator upon full implementation of the Proposed CT Plan should improve upon the policies of the Equity Data Plans by facilitating both uniform plan policies and the uniform application of those policies. Moreover, the Proposed CT Plan will provide for a broader set of Advisory Committee members than the Equity Data Plans do, and the Advisory Committee will have the opportunity to provide input from a broader selection of market participants on any proposed policies prior to the adoption of those policies by the Operating Committee.[95] Accordingly, the Commission is not modifying the Proposed CT Plan in response to these comments.

As discussed above, Section 4.1 of Article IV of the Proposed CT Plan is substantively similar to the corresponding provision of the 2021 CT Plan approved by the Commission,[96] and, other than for the removal of provisions regarding non-SRO representatives, which is consistent with the Amended Governance Order,[97] Section 4.1 was not required to be modified by the Amended Governance Order. For the same reasons stated in the 2021 Approval Order (apart from those pertaining to the participation of non-SRO representatives as members of the

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94 As the Commission stated in the Governance Order, changes to the governance structure of the SIPs are appropriate to create a governance structure that will reduce obstacles to ongoing improvement of the consolidated market data feeds in ways that the current governance structure of the Equity Data Plans has not; and making these governance changes will facilitate decision-making regarding operational changes. See Governance Order, supra note 11, 85 FR at 28707.

95 See, e.g., Article IV, Sections 4.1 and 4.7 of the Proposed CT Plan.

96 See 2021 Approval Order, supra note 19, 86 FR at 44156-63.

97 See Amended Governance Order, supra note 23, 88 FR at 61631 (stating that "[i]n accordance with the D.C. Circuit's ruling, the Commission is modifying the Governance Order to remove the provisions regarding the participation of non-SRO representatives as members of the operating committee of the Revised New Consolidated Data Plan and to make conforming changes").

operating committee of the 2021 CT Plan, which is not included in the Proposed CT Plan),[98] the Commission is approving Section 4.1 of Article IV of the Proposed CT Plan as proposed.

(b) Composition and Selection of Operating Committee

Article IV, Section 4.2 governs the composition and selection of the Operating Committee members. Article IV, Section 4.2(a) provides that each SRO group[99] and each non-affiliated SRO[100] will designate a Voting Representative to serve on the Operating Committee and vote on its behalf.[101] Article IV, Section 4.2(b) of the Proposed CT Plan provides that entities that have not yet been registered with the Commission as national securities exchanges may appoint, subject to Section 4.4(i), an individual to attend regularly scheduled Operating Committee meetings (an "SRO Applicant Observer").[102] Paragraph (b) of Section 4.2 further provides that if the SRO Applicant's Form 1 petition or Section 19(b)(1) filing is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the SRO Applicant will no longer be eligible to have an SRO Applicant Observer attend Operating Committee meetings. Article IV, Section 4.2(c) of the Proposed CT Plan provides that in the event that a non-affiliated SRO, or that all national securities exchanges in an SRO group, cease operations as a market (or have not commenced operation of a market), those entities will not be

98 See 2021 Approval Order, supra note 19, 86 FR at 44156-63.

99 For example, New York Stock Exchange LLC, NYSE American, NYSE Arca, NYSE Chicago, and NYSE National would be one SRO group for purposes of the Proposed CT Plan and would select one individual to represent the SRO group on the Operating Committee.

100 Currently, the non-affiliated SROs are FINRA, IEX, LTSE, MEMX, and MIAX PEARL.

101 See Article IV, Section 4.2(a) of the Proposed CT Plan. Section 4.2(a) further provides that each SRO group and each non-affiliated SRO may designate an alternate individual or individuals who shall be authorized to vote on behalf of such SRO group or such non-affiliated SRO, respectively, in the absence of the designated SRO Voting Representative. See id.

102 See Article IV, Section 4.2(b) of the Proposed CT Plan. This section further provides that each SRO Applicant may designate an alternate individual or individuals who shall be authorized to act as the SRO Applicant Observer on behalf of the SRO Applicant in the absence of the designated SRO Applicant Observer. See id.

permitted to appoint a Voting Representative. Such a non-affiliated SRO or SRO group will, however, be permitted to attend meetings of the Operating Committee as an observer, except for Executive Sessions.[103] If such a non-affiliated SRO or SRO group does not commence operations within six months of first attending an Operating Committee meeting as a non-operational exchange(s), it will no longer be permitted to attend Operating Committee meetings until it resumes operations as a market.[104]

The text of Section 4.2 of the Proposed CT Plan is substantively similar to the corresponding provision of the 2021 CT Plan approved by the Commission, except for the following differences, which are consistent with the requirements of the Amended Governance Order:[105] (1) the removal of all provisions regarding the participation of non-SRO representatives as members of the operating committee ("Non-SRO Voting Representatives"), consistent with requirements of the Amended Governance Order; (2) the replacement of references to "SRO Voting Representatives" with references to "Voting Representatives" which, as discussed above, conforms to the defined term; and (3) the renumbering of paragraphs in proposed Section 4.2 to conform the section with the foregoing deletions. The Commission received no comments on Section 4.2 of the Proposed CT Plan. The Commission is approving Section 4.2 as proposed for the reasons stated in the 2021 Approval Order (apart from those pertaining to the participation of non-SRO representatives as members of the operating committee of the 2021 CT Plan, which is not included in the Proposed CT Plan).

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103 See Article IV, Section 4.2(c) of the Proposed CT Plan.

104 See Article IV, Section 4.2(c) of the Proposed CT Plan.

105 See Amended Governance Order, supra note 23, 88 FR at 61631.

(c) Action of Operating Committee

Article IV, Section 4.3 of the Proposed CT Plan sets forth the voting allocation and voting structure for actions of the Operating Committee.

(i) Allocation of Votes

Consistent with the requirements of the Amended Governance Order,[106] Article IV, Section 4.3(a) of the Proposed CT Plan provides that each Voting Representative will have one vote to cast on behalf of the SRO group or non-affiliated SRO that he or she represents, with a second vote provided if the SRO group or non-affiliated SRO has a market center or centers that trade more than 15 percent of consolidated equity market share[107] for four of the six calendar months preceding a vote of the Operating Committee.[108] Commenters addressed the allocation of votes in the Proposed CT Plan.[109]

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106 See Amended Governance Order, supra note 23, 88 FR at 61639.

107 See Article IV, Section 4.3(a) of the Proposed CT Plan. Section 4.3(a) further provides that, for purposes of Section 4.3(a), "consolidated equity market share" means the average daily dollar equity trading volume of Eligible Securities of an SRO group or non-affiliated SRO as a percentage of the average daily dollar equity trading volume of all of the SRO groups and non-affiliated SROs, as reported under this Agreement or under the CQ, CTA, and UTP Plans. See id.

108 See Article IV, Section 4.3(a) of the Proposed CT Plan. Article IV, Section 4.3(a) of the Proposed CT Plan states that FINRA shall not be considered to operate a market center within the meaning of this Section 4.3(a) solely by virtue of facilitating quoting on the FINRA Alternative Display Facility or reporting on behalf of FINRA participants of transactions effected otherwise than on an exchange.

109 See Letter from Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe Global Markets, Inc. (Jan. 26, 2024) ("Cboe Letter I"); Fidelity Letter, supra note 80; Letter from Sarah Bessin, Deputy General Counsel, Securities Regulation and Nhan Nguyen, Associate General Counsel, Securities Regulation, Investment Company Institute (Feb. 26, 2024) ("ICI Letter"); Letter from Adrian Griffiths, Head of Market Structure, MEMX LLC (Feb. 26, 2024) ("MEMX Letter"); Letter from Erika Moore, Vice President and Corporate Secretary, Nasdaq, Inc. (Feb. 26, 2024) ("Nasdaq Letter"); Letter from Hope Jarkowski, General Counsel, NYSE Group, Inc. (Feb. 26, 2024) ("NYSE Letter"); Letter from Ellen Greene, managing Director, Equities & Options Market Structure and Joseph Corcoran, Managing Directors, Associate General Counsel, Securities Industry and Financial Markets Association (Feb. 26, 2024) ("SIFMA Letter"); Letter from Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe Global Markets, Inc. (May 20, 2024) ("Cboe Letter II"); Jordan Letter, supra note 84; Letter from Adrian Griffiths, Head of Market Structure, MEMX, John Ramsay, Chief Market Policy Officer, IEX, Christopher Solgan, VP, Senior Counsel, MIAX Pearl, and Alanna Barton, Director and Senior Counsel, Markets and Regulation, LTSE (Aug. 16, 2024) ("MEMX-IEX-MIAX Pearl-LTSE Letter"); Letter from Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe Global Markets, Inc. (Sept. 18, 2024) ("Cboe Letter III").

(A) The Allocation of Votes by SRO Group and Trading Volume

Several commenters support approving the allocation of votes as proposed.[110] One commenter agrees with the Proposed CT Plan provision that the voting power on the Operating Committee should be limited to one vote per exchange group, with the ability to obtain a second vote if the exchange group maintains a consolidated market share of at least fifteen percent for at least four of the six calendar months preceding a vote of the Operating Committee.[111] One commenter states that it supports the allocation of votes as proposed because it would reduce the "concentration of voting authority that is currently held by a minority of Participant organizations that control several votes today."[112]

Conversely, certain commenters state that, while the Commission stated in the 2021 Approval Order that its voting framework was designed to reflect the importance of those SROs that oversee trading activity that generates a significant amount of equity market data, the 15-percent consolidated equity market share necessary for a second vote is not rationally related to the Commission's goal.[113] Specifically, these commenters state that the Proposed CT Plan's voting framework violates the Exchange Act and is arbitrary and capricious under the Administrative Procedure Act ("APA").[114]

One commenter states that the proposed allocation of voting power is "illogical and violative of the APA" because it (1) "lacks a rational basis" and "any rational connection" to this

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110 See Fidelity Letter, supra note 80, at 3; MEMX Letter, supra note 109, at 2; ICI Letter, supra note 109, at 1-2; SIFMA Letter, supra note 109, at 2; MEMX-IEX-MIAX Pearl-LTSE Letter, supra note 109, at 1-5.

111 See Fidelity Letter, supra note 80, at 3.

112 MEMX Letter, supra note 109, at 2, 10.

113 See Cboe Letter I, supra note 109, at 2-5; Cboe Letter II, supra note 109, at 2, 3-6; Nasdaq Letter, supra note 109, at 2-5; NYSE Letter, supra note 109, at 5-7.

114 See Cboe Letter I, supra note 109, at 3-6; Nasdaq Letter, supra note 109, at 2; NYSE Letter, supra note 109, at 7.

commenter's consolidated equity market share, (2) treats the commenter's SRO group the same as dissimilarly situated non-affiliated exchanges, while treating the commenter's SRO group differently from other similarly situated SRO groups, and (3) unjustifiably equates this commenter's significance to the market to that of the much smaller, non-affiliated exchanges, thus yielding results that are "antithetical" and inconsistent with the Commission's statement that voting should reflect the "significance within the national market system of those exchanges that, in their roles as SROs, oversee trading activity that generates a significant amount of equity market data."[115]

This commenter further states that consolidated market share statistics for 2023 and year-to-date ("YTD") 2024 support its argument against allocating to its SRO group the same single vote allocated to each of the unaffiliated SROs.[116] Specifically, the commenter states that for YTD August 2024, the consolidated equity market share of its SRO group is more than four times that of two unaffiliated SROs, almost ten times more than a third unaffiliated SRO, and approaching more than 2600 times more volume than a fourth unaffiliated SRO.[117] This commenter further states that for YTD August 2024, the combined consolidated equity market share of these four non-affiliated exchanges was little more than 50% of the consolidated equity market share alone of this commenter's SRO group.[118] The commenter states that, by allocating the non-affiliated exchanges four total votes and the commenter's SRO group one vote, the Commission has effectively given the non-affiliated exchanges eight times more voting power

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115 Cboe Letter I, supra note 109, at 2, 3-4; see also Cboe Letter II, supra note 109, at 3-6; Cboe Letter III, supra note 109, at 7-8.

116 See Cboe Letter II, supra note 109, at 3.

117 See Cboe Letter III, supra note 109, at 7.

118 See Cboe Letter II, supra note 109, at 3.

for their market share relative to the commenter's, which the commenter states is unsupported by reasoned analysis.[119]

One commenter states that the Commission should consider more than just trading market share when considering the significance of exchanges and SRO groups to the national market structure, saying that it would not be reasonable for the Commission to conclude that an exchange group that operates one or more listing exchanges, attracts significant quoting and trading activity, generates a substantial portion of equity market data, and commands more than 10% of the trading market share is no longer "significant" enough to warrant a second vote (and have the same voting power as an exchange with zero percent market share).[120]

Another commenter states that consideration should be given to comments favoring a "more market oriented" approach to the allocation of votes under the Proposed CT Plan because, as proposed, the voting mechanism seems "somewhat arbitrary," with one SRO group and much smaller unaffiliated SROs having equivalent voting power.[121] This commenter states that, based on average daily volume for the first week of June 2024, one SRO group executed over 1400 times the volume of one of the unaffiliated SROs.[122] This commenter questions whether it is appropriate for the basis for an equity market data voting structure to differ from that of other regulations and states that Section 31 fees, the Trading Activity Fee ("TAF") and Consolidated Audit Trail ("CAT") fees are, for example, all based on either notional amount of sales

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119 See id. at 4; Cboe Letter III, supra note 109, at 8.

120 See NYSE Letter, supra note 109, at 6.

121 Jordan Letter, supra note 84, at 2.

122 See id. This commenter further states that approval of the Proposed CT Plan, including its proposed voting structure, would likely lead to litigation with consequent delays to the implementation of the Proposed CT Plan. See id.

multiplied by a fixed assessment fee or total number of round turn transactions multiplied by a fixed fee or number of shares executed or even an income assessment based on gross revenue.[123]

The Commission disagrees that the allocation of the same voting power to a single SRO and to a group of several SROs—even if an SRO group operates one or more listing exchanges, attracts significant quoting and trading activity, generates a substantial portion of equity market data, and commands more than 10% of the trading market share—is without rational basis or inconsistent with the APA. As the Commission stated in the Governance Order:

> Congress charged the Commission with ensuring the "prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information." In furtherance of this responsibility, the Commission seeks through its rules and regulations to help ensure that certain "core data" is widely available for reasonable fees. The Commission has recognized that investors must have this core data "to participate in the U.S. equity markets." And the purpose of the Equity Data Plans, adopted pursuant to Regulation NMS, is to facilitate the collection and dissemination of core data so that the public has ready access to a "comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day."[124]

However, as the Commission also stated, "exchange consolidation has altered the relative voting power of SROs such that exchange groups under common management now have greater voting power with respect to plan governance. Exchanges that historically had only one vote on NMS plans have now been consolidated into exchange groups that can control blocks of four or five votes."[125] Thus, as the Commission explained in the Governance Order, "the current governance structure [of the Equity Data Plans] provides voting power based on each exchange license and thereby concentrates voting power in a small number of exchange group stakeholders, which also

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123 See id.

124 Governance Order, supra note 11, 85 FR at 28705 (citations omitted).

125 Id. at 28712.

have inherent conflicts of interest with respect to the operation of the Plans,"[126] that these conflicts have "perpetuated disincentives for the Equity Data Plans to make improvements to the SIP data products"[127] and "contributed to significant concerns regarding whether the consolidated feeds meet the purposes for them set out by Congress and by the Commission in adopting the national market system,"[128] and that "modernizing plan governance by reallocating votes by exchange group should help to ensure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS stocks and the fairness and usefulness of the form and content of that information."[129]

Moreover, in ruling on the petition challenging the 2021 Approval Order, the D.C. Circuit confirmed that the allocation of votes in the CT Plan by exchange group is consistent with Section 11A of the Exchange Act and Rule 608 of Regulation NMS.[130] Inherent in that structure—which was included in both the Governance Order and the Amended Governance Order—is the provision of the same voting power to some SRO groups with larger market share and exchanges with smaller trading volume. And, at most, the largest SRO groups would have only twice the voting power of the smallest unaffiliated exchange. By implication, in upholding these provisions, the Court concluded that these features were rational.[131] Moreover, although commenters have opposed granting similar voting power to SRO groups and non-affiliated SROs

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126 Id. at 28713.

127 Id.

128 Id. at 28702.

129 Id. at 28713.

130 See Nasdaq v. SEC, supra note 20, 38 F.4th at 1138-42.

131 See id. at 1139-42 (addressing the petitioners' arguments that the Commission's decision to "limit SRO votes according to an SRO's corporate affiliation with another SRO" was arbitrary, capricious, and contrary to section 11A of the Exchange Act); see also infra notes 189-197 and accompanying text.

with significantly different trading volumes,[132] the existing system for allocating votes in the Equity Data Plans, which is favored by these commenters, allocates voting power without any consideration of trading volume. The existing system also provides the large SRO groups disproportionate influence over the Equity Data Plans through casting the vote of multiple consolidated SROs as a unified block.[133] Addressing this allocation of disproportionate voting power to SRO groups with conflicts of interest—not simply favoring non-affiliated SRO groups or denying the SRO groups a majority of voting power[134]—remains the Commission's purpose in allocating votes among SROs in the Amended Governance Order.

Finally, while one commenter also questions whether it is appropriate for the voting structure of the Proposed CT Plan to differ from other regulations—such as the allocation of Section 31 fees, the TAF, and CAT fees—the voting scheme required by the Amended Governance Order is designed to address issues specific to the Equity Data Plans: the concentration of voting power in a small number of exchange group stakeholders with inherent conflicts of interest with respect to the operation of the Equity Data Plans, which has perpetuated disincentives for the Equity Data Plans to make improvements to the SIP data products.[135] Moreover, if the Commission allocated voting power on the Proposed CT Plan purely by trading volume, similar to the fees cited by the commenter, the result would be an even greater

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132 See supra notes 116-120, 122, 123 and accompanying text.

133 See Governance Order, supra note 11, 85 FR at 28713 (citing the "disproportionate influence affiliated exchange groups currently exercise in Plan matters by voting as a block," as well as the "need to rebalance voting power in Plan governance" to address this concern).

134 See Cboe Letter II, supra note 109, at 2.

135 See Governance Order, supra note 11, 85 FR at 28713; Amended Governance Order, supra note 23, 88 FR at 61632. See also Nasdaq v. SEC, supra note 20, 38 F.4th at 1140-41 (finding that the Commission had justified its "differing treatment of SROs for voting" in the 2021 Approval Order).

concentration of voting power than currently exists in the Equity Data Plans, perpetuating the existing disincentives to improve the SIP data products.

(B) Market Changes Since 2020

Several commenters also state that, because of changes that have taken place in the markets since the Commission set the 15-percent threshold in the Governance Order, that threshold is no longer supportable and should be reconsidered. One commenter states that the 15-percent threshold for obtaining a second vote has become "stale" since the Commission first proposed it in 2020.[136] This commenter states that, since the Commission justified the 15-percent threshold in the Governance Order, there has been a proliferation of non-affiliated exchanges, with three independent exchanges having launched (LTSE, MEMX, and MIAX PEARL), BOX Exchange LLC having received approval of its registration as an exchange, and that three other entities have announced plans to launch new exchanges.[137]

This commenter further states that the Commission's concerns in 2020 and 2021 about exchange consolidation were unfounded when rejecting a 10% threshold.[138] This commenter states that the Commission justified the 15-percent threshold in 2020 as reflecting "the significance within the national market system of those exchanges that, in their roles as SROs, oversee trading activity that generates a significant amount of equity market data," and by pointing to the market shares of the three SRO groups at that time, which the commenter says were all "comfortably above" the 15-percent threshold but have since declined.[139]

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136 NYSE Letter, supra note 109, at 2.

137 See id. at 5.

138 See id. See also Nasdaq Letter, supra note 109, at 4 (stating that, as new exchanges have entered the market over the past three years, the trend of liquidity moving toward non-exchange venues has continued).

139 NYSE Letter, supra note 109, at 5 (quoting the 2021 Approval Order, supra note 19, 86 FR at 44164).

The commenter states that the Commission "clearly did not foresee this turn of events," and that, "[b]y the Commission's own reasoning, if the Proposed Plan does not allocate a second vote to the SRO Groups that oversee the vast majority of on-exchange quoting, trading, and related market data creation, then the voting threshold is incorrectly set."[140] The commenter states that, given the increasing fragmentation of the market and decline of SRO-group market share, an exchange group that manages to achieve 14, or 12, or even 10 percent market share should qualify for a second vote,[141] and observes that, "while the four independent exchanges have collectively managed to achieve almost 8 percent market share, none of them individually has had a market share of more than 4 percent, and one of them has essentially zero percent."[142]

Another commenter also states that the Commission based its analysis on the erroneous assumption that the largest exchange groups would have a market share ranging from 17 percent to 22 percent[143]—with the 15-percent threshold well below that range—and that data show the actual range to be approximately 4 points below that, between 13 and 18 percent, with the threshold in the middle of that range, a downward trend that is likely to endure.[144] According to this commenter, the 15-percent threshold is therefore "not fit for purpose" because it is too high to differentiate between exchanges that oversee trading activity that generates a significant amount of equity market data and those that do not.[145] This commenter further states that the Commission must examine the relevant data and articulate a satisfactory explanation for its

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140 Id. at 6.

141 See id.

142 Id.

143 See Nasdaq Letter, supra note 109, at 3 (citing Governance Order, supra note 11, 85 FR at 28714).

144 See id. at 4.

145 Id.

action including a rational connection between the facts found and the choice made.[146] The commenter states that the data does not support the proposed voting scheme.[147]

Some commenters that support the proposed voting allocation state that "relative market share trends are fluid and subject to constant change," and therefore are not relevant to the proper effectuation of the SROs' shared regulatory responsibilities in the Proposed CT Plan's voting framework.[148]

The Commission agrees with commenters that stated that relative market share trends are by their nature fluid and subject to constant change and that the court's ruling did not suggest that a transitory change in market share between competitors is relevant to the question of how to properly effectuate the SROs' shared regulatory responsibilities in the Proposed CT Plan's voting framework, or that that proposed voting structure is now, after its long procedural history, inconsistent with the Exchange Act.[149]

Additionally, while the commenters opposing the voting allocation of the Proposed CT Plan[150] state that there has been a proliferation of non-affiliated exchanges and a decline in SRO-group market share, and that the 15-percent threshold is now inconsistent with the Commission's observation in the Governance Order that the consolidated equity market share of the largest exchange groups was "already well above 10 percent and continues to range from 17 percent to 22 percent,"[151] and the Commission's statement that the threshold "reflects the significance

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146 See id.

147 See id. at 4-5.

148 MEMX-IEX-MIAX Pearl-LTSE Letter, supra note 109, at 5.

149 See id. at 3-4.

150 See Cboe Letter I, supra note 109, at 2-6; Cboe Letter II, supra note 109, at 2-8; Cboe Letter III, supra note 109, at 2-4; NYSE Letter, supra note 109, at 1-7; Nasdaq Letter, supra note 109, at 1-5.

151 See Governance Order, supra note 11, 85 FR at 28714.

within the national market system of those exchanges that, in their roles as SROs, oversee trading activity that generates a significant amount of equity market data,"[152] the Commission did not define "significant" to mean that each of the three SRO groups would, in perpetuity, receive a second vote on the new NMS plan's Operating Committee. That two SRO groups, as opposed to all three, would receive a second vote under the current distribution of trading volume, does not invalidate the Commission's decision to permit a second vote only for those unaffiliated SROs or SRO groups with at least a 15-percent market share.

Moreover, the Commission specifically rejected a lower threshold in the Governance Order precisely because adopting a lower threshold would have created the expectation that SRO groups would receive a third vote at a higher level of market share:

> Setting the threshold for a second vote at 10 percent consolidated equity market share would create the expectation that exchange groups should receive a third vote at the same interval threshold above 10 percent (e.g., 20 percent). However, the Commission is not permitting the exchange groups, regardless of their consolidated equity market share, to have a third vote as this would lead to a continuing concentration of voting power.[153]

And, in fact, the alternative voting framework proposed by one of the SRO groups, and discussed in detail below,[154] would do precisely that: lower the threshold for a second vote such that certain SRO groups would receive a third vote, increasing the concentration of voting power on the Operating Committee in the SRO groups.

The Commission, in issuing the Governance Order, also agreed with a "commenter's assertion that the two-vote cap would serve to deter actions, such as establishing a new exchange

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152 See Cboe Letter I, supra note 109, at 3 (quoting 2021 Approval Order, supra note 19, 86 FR at 44164); see also Cboe Letter II, supra note 109, at 4-5; Cboe Letter III, supra note 109, at 5, 8; NYSE Letter, supra note 109, at 2; Nasdaq Letter, supra note 109, at 1-2 (citing 2021 Approval Order, supra note 19, 86 FR at 44164).

153 Governance Order, supra note 11, 85 FR at 28714.

154 See infra Section II.B.5(c)(i)(D).

or further consolidation of existing exchanges into groups, taken for the sole purpose of gaining additional voting power on the operating committee."[155] The Commission remains concerned that, as it stated in the Governance Order, a lower market-share threshold "may be too easy to achieve through consolidation, which would result in too low a threshold for obtaining an additional vote and could lead to a continuing concentration of voting power."[156]

And although commenters state that further growth in the number of equities exchanges and further dispersion of trading volume across venues counter the Commission's concerns about exchange consolidation—and that, by the Commission's own reasoning, the threshold for a second vote was incorrectly set because it would now fail to assign a second vote to one of the three SRO groups—the ability of an SRO group or unaffiliated SRO to cross the threshold over time, in either direction, is entirely consistent with the voting scheme's express purpose. That purpose, as the Commission stated in the Governance Order, is "to rebalance voting power in Plan governance to address the disproportionate influence of affiliated exchange groups."[157] Indeed, that an SRO group's market share has crossed the threshold for a second vote since 2020 demonstrates that the threshold selected by the Commission was set at a level that would, over time, continue to distinguish the very largest SRO groups and non-affiliated SROs—which will receive two votes on the Operating Committee—from the other SRO groups and non-affiliated exchanges—which would receive one vote. Thus, an analysis of the relevant data—the current distribution of equity trading volume across the exchanges and exchange groups, as well as the future distribution of voting power on the Operating Committee of the Proposed CT Plan—

155 Id.

156 Governance Order, supra note 11, 85 FR at 28714.

157 Id. at 28713.

supports the Proposed CT Plan's allocation of a second vote on the Operating Committee only to SRO groups or non-affiliated SROs with at least a 15-percent share of equities trading volume.

(C) Commission Rulemaking

One commenter states that a proposed Commission rulemaking would affect the distribution of trading volume in a way that would undercut the rationale behind the 15-percent threshold for a second vote. This commenter states that the Commission's October 2023 proposal regarding volume-based exchange transaction pricing for NMS stocks would drive trading volumes away from exchanges to off-exchange venues where volume-based pricing would still be available.[158] The commenter states that the Commission's proposed changes to on- and off-exchange minimum pricing increments and exchange access fees[159] are likely to further impact the distribution of trading across on- and off-exchange venues, as well as the market shares of individual exchanges and SRO groups.[160]

The Commission does not agree that a potential future change in the distribution of trading in the equities markets, including from the Commission's recently adopted amendments to Regulation NMS,[161] would merit changing the volume threshold for a second vote on the Proposed CT Plan's Operating Committee. And if rules adopted by the Commission were to significantly change the distribution of on- versus off-exchange trading, then the Commission could consider whether the threshold should be revisited, whether by proposed plan amendment

158 See NYSE Letter, supra note 109, at 6 (citing Volume-Based Exchange Transaction Pricing for NMS Stocks, Securities Exchange Act Release No. 98766 (Oct. 18, 2023), 88 FR 76282 (Nov. 6, 2023) (File No. S7-18-23) (Proposed Rule)).

159 See Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (File No. S7-30-22) (Final Rules) ("Regulation NMS Amendments").

160 See NYSE Letter, supra note 109, at 6-7.

161 See Regulation NMS Amendments, supra note 159.

or Commission rulemaking. For example, if the commenter were correct that Commission rulemaking would move significant trading volume off exchange, then lowering the threshold might be appropriate. However, the only recent rule amendments with expected distributional effects on order flow are the recently adopted Regulation NMS Amendments.[162] However, far from sending order flow off exchange, the net effect of the rules is expected to be additional order flow on the exchanges, potentially increasing the overall market share of the exchanges.[163] Directionally this effect would be opposite to the commenter's position and does not support its rational for lowering the threshold.

Changes in the distribution of trading may occur for many reasons in the future.[164] And that one SRO group has experienced a decline in market share crossing the 15-percent threshold does not undermine the rationale in initially setting that threshold. Indeed, the Commission considered such a possibility at the time the 15-percent threshold was set,[165] and this eventuality is consistent with the Commission's purpose in selecting the 15-percent threshold, which was to rebalance voting power to address the disproportionate influence of affiliated exchange groups.[166]

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162 See id.

163 See id., 89 FR at 81760.

164 See Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 87906 (Jan. 8, 2020), 85 FR 2164, 2176 (Jan. 14, 2020) (File No. 4-757) ("While exchange group market share has remained relatively steady over the past several years, competition for order flow among the exchanges and the registration of new national securities exchanges that trade equities may lead to more significant changes in market share.") (citation omitted).

165 See Governance Order, supra note 11, 85 FR at 28714 ("[U]sing a look-back period of at least four of the six calendar months preceding a vote of the operating committee for determining whether an exchange group or an unaffiliated exchange has met the threshold for a second vote would allow the voting structure of the New Consolidated Data Plan to adapt over time to potential fluctuations in trading volume among exchanges, while avoiding frequent changes in vote allocations resulting from short-term changes in trading activity.").

166 See Governance Order, supra note 11, 85 FR at 28713.

(D) Alternative Proposed Voting Framework

One commenter suggests,[167] and another commenter supports,[168] modifying the Proposed CT Plan to provide for a three-tiered voting framework in which SRO groups and non-affiliated SROs would receive either one, two, or three votes based on their consolidated equity market share. Pursuant to the commenter's suggestion, all SRO groups or unaffiliated SROs would receive at least one vote; SRO groups or unaffiliated SROs with between 5 and 15-percent consolidated equity market share would receive two votes; and those with more than 15-percent consolidated equity market share would receive three votes.[169] This commenter suggests that the Proposed CT Plan require a two-thirds majority vote for Plan action and that the calculation of consolidated equity market share in the Proposed CT Plan[170] be modified by removing 50 percent of the transaction volume reported by the Transaction Reporting Facilities ("TRFs")[171] because, according to the commenter, the TRFs contribute "only trades, while exchanges contribute both trades and quotes, and any calculation of consolidated equity market share should recognize this distinction."[172] Another commenter states that including the TRF volume is an error, and while it would remove the TRF volume from the calculation of consolidated equity market share altogether, it supports the other commenter's suggestion of removing 50 percent of transaction volume on the TRFs as a reasonable compromise.[173]

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167 See Cboe Letter I, supra note 109, at 6-11; Cboe Letter II, supra note 109, at 4.

168 See Nasdaq Letter, supra note 109, at 5.

169 See Cboe Letter I, supra note 109, at 3, 6-11.

170 See Article IV, Section 4.3 of the Proposed CT Plan.

171 See Cboe Letter I, supra note 109, at 3, 6-11. This commenter further states that its suggested voting allocation would support, as proposed, the Proposed CT Plan's provision that an exchange would be eligible to vote on the Proposed CT Plan's operating committee only if it operates a trading venue. See id.

172 Cboe Letter I, supra note 109, at 3.

173 See Nasdaq Letter, supra note 109, at 5.

Another commenter states that the Commission should consider more than just trading market share when evaluating the significance of the SRO or SRO group in the trading ecosystem because, according to the commenter, it would not be reasonable to conclude that an exchange group that generates a substantial portion of equity market data and commands more than 10 percent of the trading market share is no longer significant enough to warrant a second vote.[174]

As discussed above and in the Governance Order,[175] one reason that the Commission selected the 15-percent threshold for a second vote was to avoid creating the expectation that SRO groups should receive a third vote at a higher market share (e.g., 20 percent), which would perpetuate the ability of two exchange groups to command a majority of votes, which would perpetuate the status quo.[176] The Proposed CT Plan's vote allocation should not be designed to perpetuate the concentration of voting power among SRO groups or provide incentives for further exchange-group consolidation. Therefore, an individual SRO group should not receive a third vote on the Proposed CT Plan's Operating Committee, regardless of trading volume.

The Commission disagrees with commenters suggesting that the calculation of "consolidated equity market share" should be modified to remove some or all TRF volume from that calculation, because, as the Commission stated in the Governance Order, the threshold for a second vote on the Operating Committee is designed to reflect "the importance to the national market system of those exchanges that, in their roles as SROs, therefore oversee trading activity that generates a significant amount of equity market data,"[177] and removing from the calculation

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174 See NYSE Letter, supra note 109, at 6.

175 See supra notes 153-156 and accompanying text; Governance Order, supra note 11, 85 FR at 28714.

176 Governance Order, supra note 11, 85 FR at 28714.

177 Id.

some or all of the trading volume that occurs off exchange would serve to exaggerate the share of trading activity that occurs on any given exchange. Further, the Proposed CT Plan's inclusion of TRF volume is not an "error," as characterized by a commenter,[178] as the vote allocation scheme and underlying calculation in the Proposed CT Plan are consistent with the requirements of both the Governance Order and the Amended Governance Order.[179]

(E) The Effect of the D.C. Circuit's Ruling

Some commenters state that while the D.C. Circuit held that the Commission could not allocate votes to non-SRO market participants, the Commission should not "relitigate" the allocation of votes to SRO groups because the court already found that the arguments opposing the voting allocation in the Proposed CT Plan were without merit.[180] These commenters state that "the court's ruling is clear: the Commission is free to consider the policy objectives it identified in allocating votes, and the mandated allocation of votes among SROs was proper."[181] Thus, these commenters state that the proposed allocation of votes, including the 15-percent threshold for a second vote, is consistent with the Exchange Act and request that the Commission approve the Proposed CT Plan without change to the proposed voting structure.[182]

In response, another commenter states that "the D.C. Circuit did not consider whether the 15% voting threshold was consistent either with the Exchange Act or the … APA … because

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178 See supra note 173 and accompanying text.

179 See Governance Order, supra note 11, 85 FR at 28712 ("[T]he term 'consolidated equity market share' means the average daily dollar equity trading volume of an exchange group or unaffiliated SRO as a percentage of the average daily dollar equity trading volume of all of the SROs, as reported by the Equity Data Plans or the New Consolidated Data Plan." (emphasis added; citation omitted)); Amended Governance Order, supra note 23, 88 FR at 61639 (providing that the threshold for a second vote on the Operating Committee is "consolidated equity market share of more than 15 percent during four of the previous six months preceding a vote of the operating committee").

180 MEMX-IEX-MIAX Pearl-LTSE Letter, supra note 109, at 2-4.

181 Id. at 3.

182 Id. at 5.

that issue was never presented to the Court."[183] This commenter states that the Commission is not precluded from considering this commenter's alternative voting framework.[184] The commenter further states that the D.C. Circuit ruled only on the three issues raised by the petitioning exchanges,[185] and did not rule that any of the other mandates in the Governance Order were proper.[186] Moreover, this commenter states, because the D.C. Circuit vacated the 2021 Approval Order in its entirety, this had the procedural effect of "sending the SEC and the SROs back to the drawing board on how to structure voting under the Plan."[187] Finally, this commenter states that the Commission "did not limit the scope of the issues that could be raised by commenters," and instead broadly sought comment on the Proposed CT Plan.[188]

The Commission agrees that the D.C. Circuit's ruling does not preclude consideration of comments on any aspect of the Proposed CT Plan or the Amended Governance Order, including the voting framework for the Proposed CT Plan. The Commission disagrees, however, that the D.C. Circuit's decision did not address or uphold the allocation of votes to SROs in the Governance Order. The precise allocation of votes to SROs in the Governance Order and the 2021 Approval Order—which is identical to that required by the Amended Governance Order[189]—was upheld by the court.[190] In challenging the 2021 Approval Order, the SRO

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183 Cboe Letter III, supra note 109, at 2.

184 See id. at 3. See also supra Section II.B.5(c)(i)(D) (discussing the commenter's suggested alternative voting framework).

185 See supra note 20 and accompanying text.

186 See Cboe Letter III, supra note 109, at 3.

187 Id. at 3.

188 Id. at 3-4.

189 See Amended Governance Order, supra note 23, 88 FR at 61639.

190 See Nasdaq v. SEC, supra note 20; see also Cboe Letter I, supra note 109; Cboe Letter II supra note 109; Cboe Letter III, supra note 109; Nasdaq Letter, supra note 109, NYSE Letter, supra note 109.

groups[191] contended that "the Commission's use of SRO Groups departs from the Commission's past practice of treating affiliated SROs as distinct legal entities in other regulatory settings and subjects affiliated SROs to less favorable treatment as compared to unaffiliated SROs."[192] The petitioning SROs argued that the Commission's "bare assertion that its arbitrary 15% threshold for a second 'SRO Group' vote reflects the significance of those SROs' contributions to the national market system is … insufficient because it fails to justify affording the same number of votes to SRO groups that exceed the 15-percent threshold no matter their market share or the number of SROs in the group."[193] They argued that the Commission "arbitrarily selected a 15% threshold for acquiring a second vote solely to dilute the affiliated SROs' voting power,"[194] and that there could be no "justifiable reason for treating an SRO group with 14% market share differently from an otherwise identical SRO group with 15% market share."[195] The court, however, found the petitioners' arguments about the allocation of votes to SROs and SRO groups to be "without merit."[196] Further, the D.C. Circuit did not qualify in any way its judgment upholding the voting allocation scheme in the Governance Order. Thus, the court's decision did not cast any doubt on the Commission's reasoning in the Governance Order, and in fact left the allocation of votes to SROs unchanged. The Commission has considered the comments

191 See supra note 190 and accompanying text.

192 Nasdaq v. SEC, supra note 20, 38 F.4th at 1140.

193 Nasdaq v. SEC, supra note 20, Reply Brief for Petitioners, 2022 WL 225906 at *24.

194 Nasdaq v. SEC, supra note 20, Opening Brief for Petitioners, 2022 WL 225907 at *16.

195 Id., 2022 WL 225907 at *52-53.

196 Id.

regarding the voting scheme, including alternatives suggested by commenters. However, as discussed above, the voting allocation in the Governance Order remains appropriate.[197]

(F) SRO Revisions to Section 4.3

Section 4.3(a) of Article IV of the Proposed CT Plan differs from the corresponding provision of the 2021 CT Plan approved by the Commission in three respects. First, and consistent with the Amended Governance Order, proposed Section 4.3(a) omits provisions regarding the participation of non-SRO representatives as members of the Operating Committee and modifies the voting provisions to conform with modifications required by the Amended Governance Order.[198] Second, as proposed, Section 4.3(a), specifies that the average daily dollar equity trading volume used in the calculation of consolidated equity market share for purposes of establishing the SRO voting allocation pursuant to that section shall be that as reported under the Proposed CT Plan, or under the CQ, CTA, and UTP Plans, rather than as solely as reported under the CT Plan. The textual addition to Section 4.3(a) is appropriate because the average daily dollar equity trading volume of the Equity Data Plans, as proposed, would inform the initial allocation of SRO votes pursuant to this section. Thereafter, and for all subsequent allocation of SRO votes, it is the Proposed CT Plan's average daily dollar equity trading volume—and not that of the Equity Data Plans—that will be required to form the basis of that calculation. Finally, proposed Section 4.3(a) differs from the corresponding provision of the 2021 CT Plan in that the provision adds "quoting on the FINRA Alternative Display Facility" to the non-exhaustive list of activities that shall not cause FINRA to be considered to operate a market center within the

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197 Commenters' statements about other commenters' underlying interests or motivations do not affect the Commission's analysis. See, e.g., Cboe Letter III, supra note 109, at 6; MEMX-IEX-MIAX Pearl-LTSE Letter, supra note 109, at 4.

198 See Amended Governance Order, supra note 23, at 61631-32.

meaning of Section 4.3. This change to proposed Section 4.3(a) makes clear that quoting activity outside the Proposed CT Plan, such as that on the FINRA Alternative Display Facility, will not figure into calculation for allocating SRO votes pursuant to Section 4.3(a) of the Proposed CT Plan.

For the reasons discussed above, the Commission is approving Article IV, Section 4.3(a) of the Proposed CT Plan as proposed.

(ii) Operating Committee Actions and Voting

Article IV, Section 4.3(b) of the Proposed CT Plan provides that (with the limited exceptions listed in Section 4.3(c)) all actions of the Operating Committee will require the affirmative vote of not less than two-thirds of all votes on the Operating Committee, allocated in the manner provided for in Section 4.3(a).

As proposed, Section 4.3(c) provides that, notwithstanding the provisions of Section 4.3(b) the following Operating Committee actions that would require a majority vote of the Operating Committee: (1) the selection of the Advisory Committee;[199] (2) the decision to enter into Executive Session;[200] (3) the decision to discuss a matter in a legal subcommittee pursuant to Section 4.8(d) of the Proposed CT Plan;[201] and (4) decisions concerning the operation of the Company as an LLC.[202]

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199 See Article IV, Section 4.7 of the Proposed CT Plan (providing for, among other things, the formation, composition, and function of the Advisory Committee).

200 See Article IV, Section 4.3(c)(ii) of the Proposed CT Plan (providing that the decision to enter into Executive Session will be subject to a majority vote of the Operating Committee).

201 See Article IV, Section 4.3(c)(iii) of the Proposed CT Plan (providing that the decision to discuss a matter in a legal subcommittee pursuant to Section 4.8(d) of the Proposed CT Plan will require only a majority vote of the Operating Committee).

202 See Article IV, Section 4.3(c)(iv) of the Proposed CT Plan (providing that decisions concerning the operation of the Company as an LLC as specified in Section 10.3 and Section 11.2 of the Proposed CT Plan will require a majority vote of the Operating Committee). See also Article X, Section 10.3 of the Proposed CT Plan (providing that any compromise or settlement of any tax audit or litigation affecting members, as

In the OIP, the Commission solicited comment on, among other things, whether there were additional actions of the Proposed CT Plan that should not be subject to the two-thirds voting requirement in Section 4.3(b) of the Proposed CT Plan.[203] The Commission received several comments addressing the two-thirds voting requirement in Section 4.3(b) of the Proposed CT Plan. One commenter states that the Proposed CT Plan should be modified to provide that a simple—rather than two-thirds—majority vote would be required for most actions of the Operating Committee, including those relating to implementation of the Proposed CT Plan, such as selection of the independent administrator, or filing of required fee amendments.[204] This potential modification, the commenter states, would streamline the Proposed CT Plan's decision-making process and reduce the risk of the delay in implementing the Proposed CT Plan.[205] This commenter states that the proposed two-thirds voting requirement is likely to be unworkable in practice, leading to gridlock, inaction, and delays in implementation.[206] This commenter states that another option would be to require different voting thresholds depending on the subject matter under consideration, adding that the commenter would not be opposed to requiring a two-thirds supermajority for more significant Proposed CT Plan amendments that are subject to a unanimous vote under the Equity Data Plans.[207]

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well as any material proposed inaction or election to be taken by the Partnership Representative, require a majority vote of Members); and Article XI, Section 11.2 of the Proposed CT Plan (providing that the distribution of proceeds from the liquidation of the Company to Members is subject to a majority vote of the Members).

203 See OIP, supra note 6, 89 FR at 33413.

204 See MEMX Letter, supra note 109, at 12.

205 See id.

206 See id.

207 See id.

One commenter opposes the proposed two-thirds rather than simple majority-vote threshold, stating that it is, in conjunction with the allocation of voting by SRO group, "a compromise, rather than striking an appropriate balance in the divergence between private rights and social costs," that will "cause stagnation rather than encourage innovation," and that the Operating Committee will "continue to be a bureaucracy with countless arguments among SROs and with the Advisory Committee, while market participants continue to suffer from ever higher market data and connectivity costs."[208]

The Commission agrees that certain additional actions by the Operating Committee should be subject to a majority vote pursuant to Section 4.3(c), beyond those proposed, in order to facilitate efficient operation of the Operating Committee and the Proposed CT Plan. Specifically, the Commission is modifying Section 4.3(c) to permit the election of the Chair and other Officers of the Plan by majority vote of the Operating Committee, rather than by the proposed two-thirds majority.[209] This modification is appropriate because requiring a two-thirds majority vote of the Operating Committee, as proposed, could provide opportunities for a minority of the votes allocated on the Operating Committee to obstruct a purely administrative action necessary for the day-to-day operations of the Proposed CT Plan.[210] Thus, modifying this section to require a majority vote of the Operating Committee to elect the Chair and Officers of

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208 Letter from Kelvin To, Founder and President, Data Boiler Technologies, LLC, (Feb. 26, 2024) ("Data Boiler Letter"), at 2, 4.

209 To effect this modification, the Commission is inserting, under Section 4.3(c)(i), the words "the election of the Chair and other Officers of the Plan;" and renumbering proposed Section 4.3(c)(i)-(iv) as Section 4.3(c)(ii-v) accordingly. See Article IV, Section 4.3 of the Proposed CT Plan (as approved).

210 With respect to the Equity Data Plans, unless otherwise specified, a majority vote of the Participants entitled to vote is required to constitute the action of the Operating Committees, including the election of a Chair. See Exhibit A, Article V, Section 2, and Article IV(a) of the CTA Plan; Article IV.C-D of the UTP Plan.

the Proposed CT Plan is appropriate because it will reduce the likelihood of unnecessary delays in the administration and implementation of the Proposed CT Plan.

Further expanding the list of actions that can be taken by a majority vote of the Operating Committee is not warranted. While commenters raise concerns about potential gridlock, stagnation, or inefficiency, as the Commission stated in the Amended Governance Order:

> the requirement for a two-thirds majority strikes an appropriate balance between ensuring that plan action has broad support among members of the operating committee while also preventing a single SRO group or unaffiliated SRO from vetoing plan action. Moreover, requiring a two-thirds, rather than a simple, majority of SRO votes, in conjunction with allocating votes by exchange group, prevents a small number of SRO groups from dictating plan action without further support from other SRO members.[211]

Section 4.3(b) differs from the corresponding provision in 2021 CT Plan approved by the Commission in that it conforms to the requirements of the Amended Governance Order by: (1) removing provisions regarding the participation of non-SRO representatives as members of the Operating Committee, and (2) modifying voting provisions to provide that all actions by the Operating Committee shall require a two-thirds majority vote of the votes allocated to the Operating Committee, except for the actions specified in Section 4.3(c).[212] Section 4.3(c) differs from the corresponding provision in the 2021 CT Plan in that it conforms to requirements of the Amended Governance Order by removing provisions relating to the participation of non-SROs representatives as members of the Operating Committee and by requiring a majority vote of the Operating Committee for the selection of members of the Advisory Committee pursuant to Section 4.7. Separately, Section 4.3(c) adds to the actions requiring only a majority vote of the Operating Committee: (1) the election of the Chair and Officers of the Plan, as modified by the

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211 Amended Governance Order, supra note 23, 88 FR at 61632.

212 See id. at 61639-41.

Commission, as well as (2) the decision to discuss a matter in a legal subcommittee pursuant to Section 4.8(d) of the Proposed CT Plan,[213] which, as discussed above, is consistent with the Amended Governance Order.

For the reasons discussed above, the Commission is approving Sections 4.3(b) as proposed and Section 4.3(c) as renumbered and modified.

(d) Meetings of the Operating Committee

Article IV, Section 4.4 of the Proposed CT Plan addresses meetings of the Operating Committee. Sections 4.4(a) through 4.4(f) contain general provisions regarding Operating Committee meetings, and Section 4.4(g) contains provisions specific to meetings in Executive Session.

Sections 4.4(a) through 4.4(f) are identical to the corresponding provisions of the 2021 CT Plan approved by the Commission,[214] with the following exceptions, all of which are consistent with the requirements of the Amended Governance Order.[215] First, as proposed, Section 4.4(a) adds a reference to "Advisory Committee members"[216] and corrects a cross-reference to reflect the numbering of paragraphs in the Proposed CT Plan. Second, proposed Section 4.4(c) deletes language regarding quorum requirements of Voting Representatives, consistent with the requirements of the Amended Governance Order.[217] And third, for the same reason as explained above—that the replaced term is the defined term—proposed Section 4.4(e)

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213 See id.

214 See 2021 Approval Order, supra note 19, 86 FR at 44166-68, 44213-14.

215 See Amended Governance Order, supra note 23, 88 FR at 61639-41.

216 See id. at 61632 (stating that "because non-SRO representatives will no longer be required to be included as voting members of the operating committee of the Revised New Consolidated Data Plan, the Commission is modifying the Governance Order's requirements to provide that the Revised New Consolidated Data Plan must provide for participation by non-SROs in the operation of the plan as members of an advisory committee").

217 See id.

replaces reference to "SRO Voting Representatives" with reference to "Voting Representatives."[218] The Commission is, however, modifying the text of Section 4.4(e)(ii) to replace the reference to "Section 4.3" in the first sentence of paragraph (ii) of Section 4.4(e) with a reference to "Section 4.3(c)," to conform this provision to the Commission's modifications to Section 4.3(c)(i) regarding the election of the Chair and other officers of the Proposed CT Plan.[219] Separately, the Commission is modifying Section 4.4(e) to replace the term "Operative Date" with the term "Effective Date" as that term is defined in the Recitals. This change is appropriate because the Effective Date of the Agreement is the date it is approved by the Commission, whereas the Operative Date, as defined, does not occur until the date that Members conduct, through the Company, the Processor and Administrator functions related to the public dissemination of real-time consolidated equity market data and the Equity Data Plans cease their operations. As proposed, Section 4.4(e) states that the Chair of the Operating Committee shall be elected beginning with the first quarterly meeting of the Operating Committee following the Operative Date. The modification will, consistent with the role and functions of the Chair as outlined in Section 4.4(e), facilitate the implementation of the Proposed CT Plan, as the Chair will be able to be elected following the Effective Date and will be able to enter into contracts on behalf of the Company.

The Commission received no comments on Section 4.4(a)-(d) and (f) of the Proposed CT Plan, and for the foregoing reasons, as well as for the reasons stated with respect to the

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218 See Article I, Section 1.1(84) of the Proposed CT Plan (as approved) (defining the term "Voting Representative").

219 See supra note 209 and accompanying text.

corresponding provisions in the 2021 Approval Order,[220] the Commission is approving Section 4.4(a)-(d), and (f) of the Proposed CT Plan as proposed, and Section 4.4(e) as modified.[221]

Article IV, Section 4.4(g) of the Proposed CT Plan provides that, notwithstanding any other provision of the Proposed CT Plan, the Voting Representatives, Member Observers, SEC staff, and other persons as deemed appropriate by a majority vote of the Voting Representatives may meet in an Executive Session of the Operating Committee to discuss an item of business for which it is appropriate to exclude the Advisory Committee. A request to meet in Executive Session must be included on the written agenda for an Operating Committee meeting, along with a clearly stated rationale as to why that item would be appropriate for discussion in Executive Session.[222] A majority vote of the Voting Representatives would be required to create an Executive Session.[223] The Voting Representatives would be permitted to discuss only the topic for which the Executive Session was created and would disband upon fully discussing the topic.[224]

Article IV, Section 4.4(g)(i) of the Proposed CT Plan also provides that topics discussed in Executive Session "should" be limited to the following: (1) any topic that requires discussion of Highly Confidential Information; (2) Vendor or Subscriber Audit Findings; (3) litigation matters; (4) responses to regulators with respect to inquiries, examinations, or findings; and (5) other discrete matters approved by the Operating Committee.[225] Section 4.4(g)(ii) states that the mere fact that a topic is controversial or a matter of dispute does not, by itself, make a topic

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220 See 2021 Approval Order, supra note 19, 86 FR at 44166-68.

221 See id. at 44166-72.

222 See Article IV, Section 4.4(g) of the Proposed CT Plan.

223 See id.

224 See Article IV, Section 4.4(g) of the Proposed CT Plan.

225 See Article IV, Section 4.4(g)(i)(A)-(E) of the Proposed CT Plan.

appropriate for Executive Session.[226] This section further provides that the minutes for an Executive Session must include the reason for including any item in an Executive Session.[227] Section 4.4(g)(iii) provides that requests to discuss a topic in Executive Session must be included on the written agenda for the Operating Committee meeting, along with the clearly stated rationale for each topic as to why such discussion is appropriate for Executive Session.[228] This section further provides that the rationale may be that the topic to be discussed falls within the list of topics that may be discussed pursuant to paragraph 4.4(g)(i).[229]

The Commission received one comment on Section 4.4(g). Specifically, one commenter suggests that the Proposed CT Plan should be modified to: (1) use non-discretionary, rather than permissive language, with respect to the scope of potential items that could be discussed in Executive Session and (2) preclude discussions regarding contract negotiations with the plan processors or the plan administrator in Executive Session.[230] This commenter states that "similar policy rationales for narrowly tailoring the use of Executive Sessions or other exclusive meeting forums apply where non-SROs are Advisory Committee members" rather than voting non-SRO members, as provided in the 2021 CT Plan.[231]

The Commission agrees with the commenter that the Proposed CT Plan should provide clear boundaries with respect to the scope of potential topics permitted to be discussed in an

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226 See Article IV, Section 4.4(g)(ii) of the Proposed CT Plan.

227 See id.

228 See Article IV, Section 4.4(g)(iii) of the Proposed CT Plan.

229 See id.

230 See ICI Letter, supra note 109, at 3, n.11.

231 Id. See also Section 4.4(g)(i) of the 2021 CT Plan; 2021 Approval Order, supra note 19, 86 FR at 44214.

Executive Session.[232] Thus, for the same reasons discussed in the 2021 Approval Order,[233] the Commission is modifying Article IV, Section 4.4(g)(i) of the Proposed CT Plan to require that the items for discussion in an Executive Session "shall be" limited to the topics enumerated in subsections 4.4(g)(i)(A)-(E) of the Proposed CT Plan.[234]

As the Commission stated in the 2021 Approval Order, "not every topic that may be appropriate for Executive Session can be foreseen, and … some provision must therefore be made in the CT Plan for unanticipated topics suitable for Executive Session."[235] The language in Section 4.4(g)(i)(E) that permits the SROs to meet in Executive Session to discuss "[o]ther discrete matters approved by the Operating Committee" provides the necessary flexibility for unanticipated topics to be addressed without altering the list of permissible topics for Executive Session into a non-exclusive list of suggestions.

The Commission does not agree with the commenter's suggestion that the Proposed CT Plan provide that "discussions regarding contract negotiations with the Processors or Administrator" do not qualify for discussion in Executive Session.[236] While the Commission specifically added this language to the plan it approved in the 2021 Approval Order,[237] that was in the context of an Operating Committee that included Non-SRO Voting Representatives as full

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232 See 2021 Approval Order, supra note 19, 86 FR at 44170 (stating that "the topics that may be discussed in Executive Session should be specifically enumerated in the CT Plan to provide transparent and clear boundaries").

233 See id. (modifying Article IV, Section 4.4(g)(i) of the 2021 CT Plan to require that the items for discussion in an Executive Session "shall be" limited to the topics enumerated in subsections 4.4(g)(i)(A)-(E) of that plan).

234 To effect this change, the Commission is modifying proposed Section 4.4(g)(i) of the Proposed CT Plan to delete the word "should" and replace it with "shall." The Commission is also making a conforming change to proposed Section 4.4(g)(i) of the Proposed CT Plan to remove the word "as" that appears after "topics" in that subsection.

235 2021 Approval Order, supra note 19, 86 FR at 44171.

236 ICI Letter, supra note 109, at 3.

237 See 2021 Approval Order, supra note 19, 86 FR at 44170-71.

members, and the Commission did not believe that it was appropriate for any members of the Operating Committee to be excluded from such discussions by holding the discussions in an SRO-only Executive Session.[238] In the Proposed CT Plan, however, the Operating Committee will not include any non-SRO representatives,[239] and it is therefore appropriate, and consistent with the Amended Governance Order, for the Operating Committee to meet in Executive Session to discuss "[a]ny topic that requires discussion of Highly Confidential Information," which, by definition, includes discussion concerning contract negotiations with the Processors or the Administrator.

Section 4.4(g) of the Proposed CT Plan differs from the corresponding provision of the 2021 CT Plan approved by the Commission[240] in several respects. First, this section conforms to requirements of the Amended Governance Order by removing provisions governing the participation of non-SROs as members of the Operating Committee, and, relatedly, by using the terms "Voting Representatives" rather than "SRO Voting Representatives," and "Advisory Committee" rather than "Non-SRO Voting Representatives." Separately, Section 4.4(g)(i) differs in that it (1) removes, as a topic not permitted for discussion within an Executive Session, discussions regarding contract negotiations with the Processor or the Administrator for the reasons discussed, and (2) removes a provision addressing voting requirements for actions requiring a vote in Executive Session, which reduces redundancy because such requirements are set forth in Section 4.3(a). The modification made by the Commission to Section 4.4(g)(i) (to replace "should" with "shall") is appropriate because it conforms this provision with the

238 See id.

239 See Amended Governance Order, supra note 23, 88 FR at 61639-41.

240 See 2021 Approval Order, supra note 19, 86 FR at 44168-71.

corresponding provision of the 2021 CT Plan approved by the Commission.[241] For the foregoing reasons, as well as those stated in the 2021 Approval Order with respect to the corresponding provisions of the 2021 CT Plan, (apart from those pertaining to the participation of non-SROs representatives as members of the operating committee of the 2021 CT Plan, which is not included in the Proposed CT Plan),[242] the Commission is approving Section 4.4(g) as modified.

(e) Certain Transactions

Article IV, Section 4.5 of the Proposed CT Plan states that the Company is not prohibited from employing or dealing with persons in which an SRO or any of its affiliates has a connection or a direct or indirect interest. Specifically, the section provides that the fact that a Member or any of its Affiliates is directly or indirectly interested in or connected with any person employed by the Company to render or perform a service, or from which or to whom the Company may buy or sell any property, shall not prohibit the Company from employing or dealing with such person.

Section 4.5 is identical to the corresponding provision of the 2021 CT Plan approved by the Commission,[243] and was not required to be modified by the Amended Governance Order. The Commission received no comment on Section 4.5 of the Proposed CT Plan, and for the same reasons stated in the 2021 Approval Order,[244] the Commission is approving Section 4.5 of the Proposed CT Plan as proposed.

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241 See id. at 44170.

242 See id. at 44168-71.

243 See id.

244 See id.

(f) Company Opportunities

Article IV, Section 4.6(a) of the Proposed CT Plan provides that each Member, its Affiliates, and each of its respective equity holders, controlling persons, and employees may have business interests and engage in business activities in addition to those relating to the Company.[245] Section 4.6(b) provides that Members are permitted to have, and may presently or in the future have, investments or other business relationships with persons engaged in the business of the Company other than through the Company, and that Members have and may develop strategic relationships with businesses that are and may be competitive or complementary with the Company.[246] Section 4.6(b) further provides that none of the SROs shall be obligated to recommend or take any action that prefers the interest of the Company or any other Member over its own interests, prohibited from pursing and engaging in other activities, nor obligated to inform or present to the Company any opportunity, relationship, or investment.[247] Finally, this section states that Members will not acquire or be entitled to any interest or participation in any other business as a result of the participation therein of any of the other Members, and that the involvement of another Member in any other business does not constitute a conflict of interest by such person with respect to the Company. This provision defines investments or other business relationships with persons engaged in the business of the Company other than through the Proposed CT Plan as "Other Business."[248] Separately, Exhibit B ("Disclosures") of the Proposed CT Plan provides a list of questions and instructions tailored to elicit responses that disclose potential conflicts of interest.

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245 See Article IV, Section 4.6(a). This Section further provides that neither the Company nor any Member shall have any rights by virtue of this Agreement in any business ventures of any such Person. See id.

246 See Article IV, Section 4.6(b) of the Proposed CT Plan.

247 See id.

248 See id.

Section 4.6 is identical to the corresponding provision of the 2021 CT Plan approved by the Commission,[249] and was not required to be modified by the Amended Governance Order. The Commission received no comment on Section 4.6 of the Proposed CT Plan, and, for the same reasons stated in the 2021 Approval Order,[250] the Commission is approving Section 4.6 of the Proposed CT Plan as proposed.

(g) Advisory Committee

Article IV, Section 4.7 of the Proposed CT Plan governs the formation, composition, and function of the Advisory Committee to the Proposed CT Plan. Section 4.7(a) provides that, notwithstanding any other provision of the Proposed CT Plan, an Advisory Committee to the Proposed CT Plan shall be formed and shall function in accordance with the provisions set forth in that section.[251] Section 4.7(b) governs the composition of the Advisory Committee. Specifically, this section provides that the members of the Advisory Committee will be selected by the Operating Committee for two-year terms as follows: (1) by affirmative vote of a majority of the Members entitled to vote, the Operating Committee will select at least one representative from each of the following categories to be members of the Advisory Committee: (A) an institutional investor; (B) a broker-dealer with a predominantly retail investor customer base; (C) a broker-dealer with a predominantly institutional investor customer base; (D) a securities market data vendor that is not affiliated or associated with a Member, broker-dealer, or investment adviser with third-party clients; (E) an issuer of NMS stock that is not affiliated or associated with a Member, broker-dealer, or investment adviser with third-party clients; and

249 See 2021 Approval Order, supra note 19, 86 FR at 44173-74.

250 See id.

251 See Article IV, Section 4.7(a) of the Proposed CT Plan.

(F) a Retail Representative.[252] Section 4.7(b)(i) further addresses Advisory Committee selections and provides that the Operating Committee will not be permitted to select any person employed by or affiliated with any Member or its affiliates or facilities.[253] Section 4.7(b)(ii) governs Member selections and provides that each Member will have the right to select one member of the Advisory Committee, provided, however, that a Member will not be permitted to select any person employed by or affiliated with any Member or its affiliates or facilities.

Section 4.7(c), as proposed, sets forth the function of the Advisory Committee. Specifically, Section 4.7(c) provides that members of the Advisory Committee will have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters.[254] This section further provides that such matters will include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan.[255] Finally, Section 4.7(d), as proposed, clarifies that members of the Advisory Committee are not Members of the Company.[256]

One commenter supports provisions addressing the composition and attendance at Operating Committee and subcommittee meetings by members of the Advisory Committee, stating that this feature of the Proposed CT Plan is essential to providing non-SRO market participants with the transparency needed to continue to provide their views to the Operating Committee and participate in plan governance.[257]

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252 See Article IV, Section 4.7(b)(i) of the Proposed CT Plan.

253 See Article IV, Section 4.7(b)(ii) of the Proposed CT Plan.

254 See Article IV, Section 4.7(c) of the Proposed CT Plan.

255 See id.

256 See Article IV, Section 4.7(d) of the Proposed CT Plan.

257 See ICI Letter, supra note 109, at 2.

As required by the Amended Governance Order, the Proposed CT Plan provides for participation by non-SROs in the operation of the Proposed CT Plan as members of an advisory committee.[258] Further, the provisions of Section 4.4(a) (permitting attendance by Advisory Committee members at meetings of the Operating Committee, except for Executive Sessions), Section 4.4(b) (requiring the provision of subcommittee minutes to members of the Advisory Committee), and Section 4.8(c) (permitting attendance by Advisory Committee members at subcommittee meetings, other than a legal subcommittee) provide transparency in the operations of the Proposed CT Plan, as supported by the commenter.

The Commission is, however, modifying proposed Section 4.7 to further conform provisions regarding the composition and selection of members of the Advisory Committee with the requirements of the Amended Governance Order. First, the Commission is modifying Section 4.7(b) to require that selection of members of the Advisory Committee shall be by majority vote of the Operating Committee,[259] as required by the Amended Governance Order,[260] rather than "[b]y affirmative vote of a majority of the Members entitled to vote," as proposed. The modification is appropriate to conform the Proposed CT Plan to the requirements of the Amended Governance Order, which requires that votes on the Operating Committee shall be allocated by SRO Group or Non-Affiliated SRO rather than by individual SROs. To effect this modification the Commission, is deleting, from paragraph (b)(i) of proposed Section 4.7 the following text: "Members of the Advisory Committee shall be selected for two-year terms as follows: (i) Operating Committee Selections. By affirmative vote of a majority of the Members

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258 See Amended Governance Order, supra note 23, 88 FR at 61632, 61639.

259 See Article IV Section 4.3(c)(ii) of the Proposed CT Plan (as approved).

260 See Amended Governance Order, supra note 23, 88 FR at 61639 ("The Revised New Consolidated Data Plan shall provide for a non-voting Advisory Committee to be selected by majority vote of the operating committee.").

entitled to vote."[261] The Commission is further modifying Section 4.7(b), as renumbered, to insert, in its first sentence, the words "by majority vote," and is moving the phrase "Members of the Advisory Committee shall be selected for two-year terms" to a new Section 4.7(c).[262]

Further, the Commission is modifying the Proposed CT Plan by deleting Section 4.7(b)(ii) in its entirety. Section 4.7(b)(ii) would have provided each SRO with the ability to appoint a person to serve on the Advisory Committee. That provision, however, is inconsistent with the requirement of the Amended Governance Order:

> The Revised New Consolidated Data Plan shall provide for a non-voting Advisory Committee to be selected by majority vote of the operating committee. The Advisory Committee shall consist of individuals representing each of the following categories: an institutional investor, a broker-dealer with a predominantly retail investor customer base, a broker-dealer with a predominantly institutional investor customer base, a securities market data vendor, an issuer of NMS stock, and a person who represents the interests of retail investors ("retail representative"), provided that the representatives of the securities market data vendor and the issuer are not permitted to be affiliated or associated with an SRO, a broker-dealer, or an investment adviser with third-party clients.[263]

The Amended Governance Order thus requires that members of the Advisory Committee be selected by a majority vote of the Operating Committee and lists the categories of persons who shall constitute the Advisory Committee to allow for participation by non-SROs in the operation of the new NMS plan.[264] The modification to delete Section 4.7(b)(ii) of the Proposed CT Plan is appropriate because, as discussed above, that provision is inconsistent with requirements of the Amended Governance Order.[265] Permitting each of the SROs that are "Members" of the

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261 The Commission is further modifying Section 4.7(b)(i) to (1) remove, from its first sentence, the comma and spacing after "vote," as well as the "t" that immediately follows, and (2) substitute, for the stricken "t," a capital "T." See Article IV, Section 4.3(c)(ii) of the Proposed CT Plan (as approved).

262 Accordingly, the Commission is renumbering proposed Sections 4.7(c) and (d) as Section 4.7(d) and (e), respectively.

263 Amended Governance Order, supra note 23, 88 FR at 61639.

264 See id.

265 See id.

Proposed CT Plan to appoint its own member to the Advisory Committee would create an Advisory Committee numerically dominated by the chosen representatives of individual SROs, rather than one reflecting the broader industry perspectives provided by the six required categories specified by the Amended Governance Order.

For the foregoing reasons, the Commission is approving Section 4.7 of the Proposed CT Plan as modified.

(h) Subcommittees

Section 4.8 of Article IV of the Proposed CT Plan governs the Operating Committee's discretion to create and disband subcommittees, as well as the selection of subcommittee chairs, permissible attendees at subcommittee meetings, minutes of subcommittee meetings, and special provisions applicable to meetings of a legal subcommittee.

(i) Selection of Subcommittee Chairs

Paragraph (a) of Section 4.8 permits the Operating Committee to create and disband subcommittees and to determine the duties, responsibilities, powers, and composition of any of its subcommittees.[266] This paragraph also requires that subcommittee chairs be selected by the Operating Committee from Voting Representatives.[267] Furthermore, this paragraph provides that the Operating Committee may not delegate to a subcommittee the administrative functions to be performed by the Administrator of the Proposed CT Plan.[268]

One commenter supports the provision of the Proposed CT Plan precluding subcommittees from carrying out administrative functions of the independent administrator.[269]

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266 See Article IV, Section 4.8(a) of the Proposed CT Plan.

267 See id.

268 See id.

269 See ICI Letter, supra note 109, at 2.

Article IV, Section 4.8(a) is consistent with requirements of the Amended Governance Order[270] and differs from the corresponding provision of the 2021 CT Plan approved by the Commission[271] in that, consistent with requirements of the Amended Governance Order, it (1) removes all references to "SRO Voting Representatives," (2) replaces the term "SRO Voting Representatives" with Voting Representatives, and (3) prohibits the Operating Committee from delegating to a subcommittee the administrative functions to be performed by the Administrator.[272] For the foregoing reasons, as well as those in the 2021 Approval Order (apart from those pertaining to the participation of non-SRO representatives as members of the operating committee of the 2021 CT Plan, which is not included in the Proposed CT Plan),[273] the Commission is approving Section 4.8(a) as proposed.

(ii) Transparency of Subcommittee Meetings

Paragraph (b) of Section 4.8 provides that, except that as provided for minutes of the legal subcommittee in Section 4.8(d), the Secretary or designee will prepare minutes of all subcommittee minutes and that such minutes will be made available to the Operating Committee and members of the Advisory Committee.[274]

One commenter supports the provisions of the Proposed CT Plan addressing the preparation and distribution of all meeting minutes.[275]

Section 4.8(b) differs from the corresponding provision of the 2021 CT Plan approved by the Commission in that it conforms this provision with requirements of the Amended

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270 See Amended Governance Order, supra note 23, 88 FR at 61641.

271 See 2021 Approval Order, supra note 19, 86 FR at 44214.

272 See Amended Governance Order, supra note 23, 88 FR at 61631, 61641.

273 See 2021 Approval Order, supra note 18, 86 FR 44174.

274 See Article IV, Section 4.8(b) of the Proposed CT Plan.

275 See ICI Letter, supra note 109, at 2.

Governance Order regarding transparency of subcommittee meetings.[276] Accordingly, the Commission is approving Section 4.8(b) as proposed.

(iii) Permissible Attendees of Subcommittee Meetings

Paragraph (c) of Section 4.8 of the Proposed CT Plan states that Voting Representatives, the Advisory Committee, Member Observers, SEC staff, and other persons as deemed appropriate by the Operating Committee may attend subcommittee meetings.[277]

Section 4.8(c) is consistent with requirements of the Amended Governance Order[278] and substantively similar to the corresponding provision of the 2021 CT Plan approved by the Commission,[279] other than for replacing the term "Non-SRO Voting Representatives" with "the Advisory Committee," consistent with requirements in the Amended Governance Order.[280] The Commission received no comments on Section 4.8(c), and, for the same reasons as stated in the 2021 Approval Order (apart from those pertaining to participation of non-SRO representatives as member of the operating committee of the 2021 CT Plan, which is not part of the Proposed CT Plan),[281] the Commission is approving Section 4.8(c) as proposed.

(iv) Legal Subcommittee

Article IV, Section 4.8(d) provides that Voting Representatives, Member Observers, and other persons as deemed appropriate by majority vote of the Voting Representatives may meet in a subcommittee to discuss an item that exclusively affects the Members with respect to the following: (1) litigation matters or responses to regulators with respect to inquiries,

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276 See Amended Governance Order, supra note 23, 88 FR at 61638, 61641.

277 See Article IV, Section 4.8(c) of the Proposed CT Plan.

278 See Amended Governance Order, supra note 23, 88 FR at 61631, 61638-39.

279 See 2021 Approval Order, supra note 19, 86 FR at 44175, 44214.

280 See Amended Governance Order, supra note 23, 88 FR at 61631-32.

281 See 2021 Approval Order, supra note 19, 86 FR at 44175, 44214.

examinations, or findings; and (2) other discrete legal matters approved by the Operating Committee.[282] Section 4.8(d) further provides that the Secretary will prepare the minutes of legal subcommittee meetings, and that such minutes will include the following: (i) attendance at the meeting; (ii) the subject matter of each item discussed; (iii) sufficient non-privileged information to identify the rationale for referring the matter to the legal subcommittee, and (iv) the privilege or privileges claimed with respect to that item.[283] This paragraph further provides that such minutes will be made available only to the Voting Representatives, Member Observers, and other persons deemed appropriate by a majority vote of the Operating Committee.[284]

One commenter supports the provisions of the Proposed CT Plan addressing the preparation and distribution of all meeting minutes.[285] This commenter also states that the Commission should reincorporate provisions of the 2021 CT Plan approved by the Commission that were intended to promote the role of non-SROs, including expanding the scope of information required to justify referral of a matter to a legal subcommittee.[286] This commenter states that similar policy rationales for narrowly tailoring the use of Executive Sessions or other exclusive meetings apply when non-SROs are Advisory Committee members.[287]

The provisions of proposed Section 4.8(d) sufficiently limit the matters that may be discussed in a legal subcommittee meeting of the Proposed CT Plan. Proposed Section 4.8(d) specifically requires that a matter referred to the legal subcommittee be limited to "an item that exclusively affects the Members" in two circumstances: (1) litigation matters or responses to

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282 See Article IV, Section 4.8(d) of the Proposed CT Plan.

283 See id.

284 See id.

285 See ICI Letter, supra note 109, at 2, n.6.

286 See id. at 3, 4.

287 See id. at 3, n.11.

regulators with respect to inquiries, examinations, or findings; and (2) other discrete legal matters approved by the Operating Committee.[288] Moreover, referral to the legal subcommittee must be approved by a majority vote of the Operating Committee. The SROs have a right to consult with legal counsel with respect to such items, and permitting non-SROs to attend discussions regarding those items might cause a waiver of the SROs' attorney-client privilege.

Moreover, the provisions of proposed Section 4.8(d) provide sufficient accountability regarding the use by the SROs of the legal subcommittee. Minutes of legal subcommittee meetings will be required, and those minutes must, for each matter discussed, identify the privilege claimed and include sufficient non-privileged information to identify the reason the matter was referred to the legal subcommittee. These minutes, like all CT Plan documents, will be available to the Commission and its staff,[289] which will provide accountability regarding use of the legal subcommittee, while preserving, to the extent appropriate, the SROs' attorney-client privilege with respect to discussions at legal subcommittee meetings.

Therefore, the provisions of proposed Section 4.8(d) are consistent with the requirements of the Amended Governance Order.[290] Moreover, other than for differences to conform to requirements of the Amended Governance Order, including (1) the omission of references to Non-SRO Voting Representatives,[291] which are no longer part of the Proposed CT Plan, (2) the use of the term "Voting Representative" rather than "SRO Voting Representative,"[292] as well as (3) the addition of specific requirements regarding the content, preparation, and distribution of

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288 See Section 4.8(d) of the Proposed CT Plan.

289 See Section 4.10 of the Proposed CT Plan (Commission Access to Information and Records).

290 See Amended Governance Order, supra note 23, 88 FR at 61638-39.

291 See id. at 61631.

292 See id.

subcommittee minutes,[293] the provisions of Section 4.8(d) are substantively similar to the corresponding provisions of the 2021 CT Plan approved by the Commission.[294] For the foregoing reasons, as well as those in the 2021 Approval Order (apart from those pertaining to the participation of non-SRO representatives as members of the operating committee of the 2021 CT Plan, which is not included in the Proposed CT Plan),[295] the Commission is approving Section 4.8(d) as proposed.

(i) Officers

Section 4.9 of Article IV of the Proposed CT Plan governs the selection of CT Plan Officers. Paragraph (a) of Section 4.9 provides that, other than the Chair, the Operating Committee may, from time to time, designate and appoint one or more persons as Officers of the Company.[296] This paragraph further provides that other than the Chair, no such officer need be a Voting Representative.[297] Pursuant to this paragraph, any officer so designated will have such authority and perform such duties as the Operating Committee may, from time to time, delegate to them, and that any such delegation may be revoked at any time by the Operating Committee.[298] Paragraph (a) of Section 4.9 further provides that the Operating Committee may assign titles to particular Officers, and that each Officer will hold office until a successor is designated, or until the Officer's death, resignation, or removal, as provided in the Proposed CT Plan.[299] This paragraph further provides that an individual may hold any number of offices, and

293 See id. at 61641.

294 See 2021 Approval Order, supra note 19, 86 FR at 44175-77.

295 See 2021 Approval Order, supra note 19, 86 FR at 44175-77.

296 See Article IV, Section 4.9(a) of the Proposed CT Plan.

297 See id.

298 See id.

299 See id.

that Officers shall not be entitled to receive salary or other compensation, unless approved by the Operating Committee.[300] This section further provides that any Officer may resign at any time, that such resignation must be made in writing, and that it shall take effect at the time specified in the notice, or if no time be specified, at the time of its receipt by the Operating Committee.[301] Pursuant to this section, the acceptance of a resignation will not be necessary to make it effective.[302] Finally, this section provides that any officer may be removed at any time by a majority vote of the Members.[303]

The Commission is modifying Section 4.9 to provide that a majority vote of the Operating Committee, rather than of its Members, shall be required to remove any Officer. To effect this modification, the Commission is therefore deleting, from proposed Section 4.9(c), the word "Members," and substituting the words "Operating Committee." This modification is appropriate to make the provision consistent with the requirements of Section 4.3(a) of the Proposed CT Plan, which governs the allocation of votes to the Members of the Proposed CT Plan. As required by the Amended Governance Order, Section 4.3 allocates votes to SRO Groups and Non-Affiliated SROs—not to each individual SRO that is a Member of the Proposed CT Plan.[304]

Other than as modified by the Commission to conform to Amended Governance Order requirements regarding action of the Operating Committee,[305] as discussed above, Section 4.9 is,

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300 See id.

301 See Article IV, Section 4.9(b) of the Proposed CT Plan.

302 See id.

303 See Article IV, Section 4.9(c) of the Proposed CT Plan.

304 See Article IV, Section 4.3(a) of the Proposed CT Plan.

305 See Amended Governance Order, supra note 23, 88 FR at 61631.

other than for immaterial differences,[306] substantively similar to the corresponding provision of the 2021 CT Plan approved by the Commission.[307] The Commission received no comments addressing Section 4.9 of the Proposed CT Plan, and, for the reasons discussed above, as well as for the reasons stated in the 2021 Approval Order (apart from those pertaining to the participation of non-SRO representatives as members of the operating committee of the 2021 CT Plan, which is not included in the Proposed CT Plan),[308] the Commission is approving Section 4.9 of the Proposed CT Plan as modified.

(j) Commission Access to Information and Records

Section 4.10 of Article IV of the Proposed CT Plan provides that "[n]othing in this Agreement shall be interpreted to limit or impede the rights of the Commission or SEC staff to access information and records of the Company or any of the Members (including their employees) pursuant to U.S. federal securities laws and the rules and regulations promulgated thereunder."[309] This provision is identical to the corresponding provision of the 2021 CT Plan approved by the Commission,[310] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing this provision, and the Commission is approving Section 4.10 of the Proposed CT Plan as proposed.

(k) Disclosure of Potential Conflicts of Interest; Recusal

Article IV, Section 4.11 of the Proposed CT Plan sets forth the disclosure requirements with respect to conflicts of interest, and the provisions for recusal, as approved by the

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306 Article IV, Section 4.9 of the Proposed CT Plan corresponds to Article IV, Section 4.8 of the 2021 CT Plan. See 2021 Approval Order, supra note 19, 86 FR at 44215.

307 See 2021 Approval Order, supra note 19, 86 FR at 44178.

308 See id.

309 See Article IV, Section 4.10 of the Proposed CT Plan.

310 See 2021 Approval Order, supra note 19, at 86 FR at 44178.

Commission[311] with certain modified requirements as set forth in the Amended Governance Order.[312]

(i) Disclosure Requirements

Section 4.11 of Article IV provides that the Members (including any Member Observers), the Processors, the Administrator, and each service provider or subcontractor (each a "Disclosing Party") engaged in Company business (including the audit of Subscribers' data usage) that has access to Restricted[313] or Highly Confidential Information[314] ("Disclosing Parties"), as defined in the Plan,[315] shall complete a prescribed questionnaire and be subject to the disclosure requirements as described in Section 4.11(c) and Exhibit B to the Plan to disclose all material facts necessary to identify potential conflicts of interest.[316] Exhibit B to the Proposed CT Plan provides a list of questions and instructions tailored to elicit responses that disclose potential conflicts of interest.[317] Section 4.11(a) also states that the Operating Committee, a Member, Processors, or Administrator may not use a service provider or subcontractor on Company business unless that service provider or subcontractor has agreed in writing to provide the

311 See Securities Exchange Act Release Nos. 88823 (May 6, 2020), 85 FR 28046 (May 12, 2020); 88824 (May 6, 2020), 85 FR 28119 (May 12, 2020) (collectively, the "Conflicts of Interest Approval Orders"). In the Governance Order, as well as in the Amended Governance Order, the Commission ordered the SROs to incorporate into the new NMS plan provisions consistent with the Conflicts of Interest Approval Orders. See Governance Order, supra note 11, 85 FR at 28726; Amended Governance Order, supra note 23, 88 FR at 61633-34, 61640.

312 See Amended Governance Order, supra note 23, 88 FR at 61634-35, 61640.

313 See Article I, Section 1.1(64) of the Proposed CT Plan (defining "Restricted Information").

314 See Article I, Section 1.1(34) of the Proposed CT Plan (defining "Highly Confidential Information").

315 See supra notes 313-314 and accompanying text.

316 See Article IV, Section 4.11(a) of the Proposed CT Plan.

317 See Article IV, Section 4.11(c) of and Exhibit B to the Proposed CT Plan.

disclosures required by this section and has submitted completed disclosures to the Administrator prior to starting work.[318]

Section 4.11(a) further provides that if state laws, rules, or regulations, or applicable professional ethics rules or standards of conduct, would act to restrict or prohibit a Disclosing Party from making any particular required disclosure, a Disclosing Party must refer to such law, rule, regulation, or professional ethics rule or standard and include in response to that disclosure the basis for its inability to provide a complete response, and further, that this would not relieve the Disclosing Party from disclosing any information it is not restricted from providing.[319]

Section 4.11(a) also describes circumstances in which a potential conflict of interest may exist,[320] provides for required updates of disclosures,[321] provides for public dissemination of disclosures,[322] and provides that Disclosing Parties that are not Members or members of the Advisory Committee to comply with the required disclosure and recusal provisions in their respective agreements with the Company, a Member, the Administrator, or the Processors.[323]

Section 4.11(a) differs substantively from the corresponding provision of the 2021 CT Plan approved by the Commission only in that, consistent with the Amended Governance Order,[324] the term "Non-SRO Voting Representatives" has been struck where it appeared and has been replaced by "members of the Advisory Committee" in Section 4.11(a)(iv). The Commission is modifying proposed Section 4.11(a) to add "members of the Advisory Committee" to the first

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318 See Article IV, Section 4.11(a) of the Proposed CT Plan.

319 See id.

320 See Article IV, Section 4.11(a)(i) of the Proposed CT Plan.

321 See Article IV, Section 4.11(a)(ii) of the Proposed CT Plan.

322 See Article IV, Section 4.11(a)(iii) of the Proposed CT Plan.

323 See Article IV, Section 4.11(a)(iv) of the Proposed CT Plan.

324 See Amended Governance Order, supra note 23, 88 FR at 61631-32.

sentence of this section, which defines "Disclosing Parties." It is appropriate that members of the Advisory Committee be included in the definition, given that they are replacing the Non-SRO Voting Representatives, will have access to Restricted or Highly Confidential Information, and are referenced in Section 4.11(a)(iv) as a Disclosing Party, they should be subject to the requirements of Section 4.11, including disclosing all material facts necessary to identify potential conflicts of interest and be recused consistent with Section 4.11(b) (discussed below). Additionally Exhibit B (the disclosure questionnaire) differs substantively from the corresponding portion of the 2021 CT Plan approved by the Commission[325] only in that, consistent with the Amended Governance Order,[326] it replaces references to Non-SRO Voting Representatives with references to members of the Advisory Committee. The Commission received no comments on Section 4.11(a) of the Proposed CT Plan, and for the foregoing reasons, the Commission is approving Section 4.11(a) as modified and Exhibit B as proposed.

(ii) Recusal

Article IV, Section 4.11(b) of the Proposed CT Plan discusses recusals and expressly prohibits a Member from appointing as its Voting Representative, alternate Voting Representative, or a Member Observer a person that is responsible for or involved with procurement for, or development, modeling, pricing, licensing (including all functions related to monitoring or ensuring a subscriber's compliance with the terms of the license contained in its data subscription agreement and all functions relating to the auditing of subscriber data usage and payment), or sale of proprietary market data product offered to customers of the CT Feeds,[327] if the person has a financial interest (including compensation) that is tied directly to the

325 See 2021 Approval Order, supra note 19, 86 FR at 44178-82, 44221-22.

326 See Amended Governance Order, supra note 23, 88 FR at 61631-32.

327 See Article I, Sections 1.16-1.18 of the Proposed CT Plan (as approved).

Disclosing Party's market data business or the procurement of market data, and if that compensation would cause a reasonable objective observer to expect the compensation to affect the impartiality of the representative.[328] Section 4.11(b) further requires recusal of a Disclosing Party (including its representative(s), employees, and agents) from participating in Company activities if it has not submitted the required disclosure form, or the Operating Committee votes that the Disclosing Party's disclosure form is materially deficient. Pursuant to this paragraph (ii), such recusal will be in effect until the Disclosing Party submits a sufficiently complete disclosure form to the Administrator.[329] Section 4.11(b)(iii) provides that a Disclosing Party, including its representatives(s), and its Affiliates and their representatives(s), is recused from voting on matters in which it or its Affiliate is seeking a position or contract with the Company or has a position or contract with the Company and whose performance is being evaluated by the Company.[330] Section 4.11(b)(iv) requires that all recusals, including a person's determination of whether to voluntarily recuse himself or herself, be reflected in the meeting minutes.[331]

One commenter supports the provision of the Proposed CT Plan that prohibits an SRO from appointing a representative that is involved with licensing of proprietary data products.[332] This commenter also supports the Proposed CT Plan's inclusion of provisions applying the conflicts-of-interest policies to any SRO-designated person, including a member observer, that attends operating committee and subcommittee meetings as proposed under this section.[333]

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328 See Article IV, Section 4.11(b)(i) of the Proposed CT Plan.

329 See Article IV, Section 4.11(b)(ii) of the Proposed CT Plan.

330 See Article IV, Section 4.11(b)(iii) of the Proposed CT Plan.

331 See Article IV, Section 4.11(b)(iv) of the Proposed CT Plan.

332 See ICI Letter, supra note 109, at 2, n.6.

333 See id.

Proposed Section 4.11(b) differs substantively from the corresponding provision of the 2021 CT Plan approved by the Commission[334] only in that it includes language specified by the Commission in the Amended Governance Order.[335] Accordingly, the Commission is approving Section 4.11(b) as proposed.

(iii) Required Disclosures

Article IV, Section 4.11(c) of the Proposed CT Plan provides that, as part of the disclosure regime, the Members, the Processors, the Administrator, members of the Advisory Committee, and service providers and subcontractors must respond to questions that are tailored to elicit responses that disclose the potential conflicts of interest as set forth in Exhibit B.

Proposed Section 4.11(c) differs substantively from the corresponding 2021 CT Plan provision approved by the Commission[336] only in that, consistent with the Amended Governance Order,[337] it replaces a reference to "Non-Voting SRO Representatives" with a reference to "members of the Advisory Committee." The Commission received no comments addressing Section 4.11(c) of the Proposed CT Plan, and the Commission is approving Section 4.11(c) as proposed.

(l) Confidentiality Policy

Article IV, Section 4.12 provides that all Covered Persons are subject to the Confidentiality Policy set forth in Exhibit C to the Proposed CT Plan.[338] This Section further

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334 See 2021 Approval Order, supra note 19, 86 FR at 44178-82, 44215.

335 See Amended Governance Order, supra note 23, 88 FR at 61635, 61640 (requiring that the term "licensing" include "all functions related to monitoring or ensuring a subscriber's compliance with the terms of the license contained in its data subscription agreement and all functions relating to the auditing of subscriber data usage and payment").

336 See 2021 Approval Order, supra note 19, 86 FR at 44181-82, 44215.

337 See Amended Governance Order, supra note 23, 88 FR at 61631-32.

338 See Article IV, Section 4.12 of the Proposed CT Plan. See also Section 1.1(3) of the Proposed CT Plan (defining "Covered Persons").

provides that the Company will arrange for Covered Persons that are not Voting Representatives, Member Observers, or members of the Advisory Committee to comply with the Confidentiality Policy under their respective agreements with either the Company, a Member, the Administrator, or the Processors.[339]

This provision is identical to the corresponding provision of the 2021 CT Plan approved by the Commission,[340] and it was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Section 4.12 of the Proposed CT Plan, and the Commission is approving Section 4.12 of the Proposed CT Plan as proposed.

Exhibit C to the Proposed CT Plan constitutes the Confidentiality Policy and describes the purpose and scope of the policy, including, among other things, the procedures regarding the custodian of and designations for all documents, as well as the procedures concerning Restricted Information, Highly Confidential Information, and Confidential Information.

The Commission received no comments on Exhibit C.

Paragraph (a) of the Confidentiality Policy lays out the purpose and scope of the policy. Paragraph (a) is unchanged from the corresponding provision of the 2021 CT Plan approved by the Commission,[341] and it was not required to be modified by the Amended Governance Order. The Commission is approving paragraph (a) of Exhibit C as proposed.

Paragraph (b) of the Confidentiality Policy lays out the procedures for treatment and disclosure of Restricted Information, Highly Confidential Information, and Confidential Information. Paragraph (b)(i) is identical to the corresponding 2021 CT Plan provisions approved

339 See Article IV, Section 4.12 of the Proposed CT Plan.

340 See 2021 Approval Order, supra note 19, 86 FR at 44182-90.

341 See id. at 44182-89, 44222-24.

by the Commission,[342] and it was not required to be modified by the Amended Governance Order. The Commission is approving paragraph (b)(i) of the Exhibit C as proposed.

Paragraph (b)(ii) of Exhibit C sets forth the procedures concerning Restricted Information. While paragraph (b)(ii) was not required to be modified by the Amended Governance Order, this paragraph has been reorganized from the corresponding provisions of the 2021 CT Plan approved by the Commission,[343] and the substance of the provisions has not changed. The Commission is, however, making one modification to this paragraph. In paragraph (b)(ii)(A)(2), where the policy states that any authorization to disclose Restricted Information must identify the Covered Persons or third party authorized to receive information, the Commission is modifying this sentence to specify that the Restricted Information to be disclosed must also be specified: "Any authorization to disclose Restricted Information must specify the information to be disclosed and identify the Covered Persons or third party authorized to receive the Restricted Information…." This modification is appropriate, as it is designed to help ensure that the Restricted Information is tightly controlled and that only the Restricted Information specified is permitted to be disclosed. Accordingly, the Commission is approving paragraph (b)(ii) of Exhibit C as modified.

Paragraph (b)(iii) of Exhibit C sets forth the procedures concerning Highly Confidential Information. While paragraph (b)(iii) was not required to be modified by the Amended Governance Order, this paragraph has been reorganized from the corresponding provisions of the 2021 CT Plan approved by the Commission,[344] and the substance of the provisions has changed in only three respects.

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342 See id.

343 See id.

344 See id.

First, for the reasons explained above, references to a "Non-SRO Voting Representative" have been replaced by references to "a member of the Advisory Committee."[345] Second, proposed paragraph (b)(iii)(A)(2) would permit Voting Representatives to share certain Highly Confidential Information with "officers and employees" of a Member who have direct or supervisory responsibility for the Member's participation in the plan, rather than with only "officers" as in the 2021 CT Plan. The addition of "employees" to the list of persons who may receive certain Highly Confidential Information is appropriate because disclosure would still be limited to those with direct or supervisory responsibility for the Member's participation in the plan and because not all persons with such responsibilities may formally be "officers" of a Member.

And third, proposed paragraph (b)(iii)(A)(1) would permit disclosures of Highly Confidential Information in specified circumstances "or as otherwise required by law (such as those required to receive the information to ensure the Member complies with its regulatory obligations)." In the 2021 Approval Order, the Commission specifically removed identical quoted language in response to commenters' concern that it was too broad and their request for greater clarity. Consequently, the Commission in the 2021 CT Plan separately permitted the disclosure of Highly Confidential Information "as required by Applicable Law" because it provided greater specificity as to when Highly Confidential Information could be disclosed, consistent with the defined term.[346] Moreover, paragraph (b)(iii)(A)(2) of the Proposed CT Plan would permit a Voting Representative to share Highly Confidential Information with "officers or employees of a Member who have direct or supervisory responsibility for the Member's

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345 See Amended Governance Order, supra note 23, 88 FR at 61631-32.

346 See 2021 Approval Order, supra note 19, 86 FR at 44186; see also Paragraph (b)(iii)(A)(4) of Exhibit C.

participation in the Plan, or with agents for the Member supporting the Member's participation in the Plan," which would thereby facilitate the Member's ability to meet its regulatory obligations with respect to the operations of the Proposed CT Plan. Accordingly, it is appropriate to modify paragraph (b)(iii)(A)(1) of Exhibit C to delete the phrase "or as otherwise required by law (such as those required to receive the information to ensure the Member complies with its regulatory obligations)."

The Commission is also modifying paragraph (b)(iii) to make the following typographical corrections. In paragraph (b)(iii)(A)(1), the Commission is correcting a cross-reference to read "Section 4.8(d)" instead of "Section 4.7(c)." In paragraph (b)(iii)(A)(2), the Commission is correcting two references to "SRO Voting Representatives" to read "Voting Representatives" because that is the defined term in the Proposed CT Plan,[347] and the Commission is also correcting a reference to "Restricted Information" to read "Highly Confidential Information" because the paragraph in fact relates to procedures concerning Highly Confidential Information. In paragraph (b)(iii)(A)(5), which discusses disclosures to third parties, the Commission is striking two references to "Covered Persons" because the paragraph discusses disclosure to identified third parties that are acting as Agents, rather than to Covered Persons. There are two paragraphs numbered (b)(iii)(A)(5), and the Commission is renumbering the second of those paragraphs as paragraph (b)(iii)(A)(6). The Commission is also correcting a reference to "SRO Voting Representatives" in paragraph (b)(iii)(B) to read "Voting Representative" because other references to SRO Voting Representatives in the Proposed CT Plan have been removed and replaced with references to Voting Representatives to conform to

347 See supra Section II.B.2.

the Amended Governance Order.[348] These modifications are appropriate because they would alleviate confusion on those referencing the Proposed CT Plan by correcting typographical errors. For the reasons discussed above, the Commission is approving paragraph (b)(iii) of Exhibit C as modified.

Paragraph (b)(iv) of Exhibit C to the Proposed CT Plan governs procedures concerning Confidential Information. With one exception, paragraph (b)(iv) as proposed is identical to the corresponding provisions of the 2021 CT Plan approved by the Commission,[349] and it was not required to be modified by the Amended Governance Order. That exception is that the word "only" was removed from the corresponding provision in the 2021 CT Plan that stated, "Additionally, a Covered Person may disclose Confidential Information only to other persons who need to receive such information to fulfill their responsibilities to the Plan, including oversight of the Plan." (Emphasis added.) Although the Commission added the word "only" to this sentence in the 2021 Approval Order,[350] the general provision of paragraph (a)(iii) of Exhibit C—which provides that "Covered Persons may not disclose Restricted, Highly Confidential, or Confidential information except as consistent with this Policy and directed by the Operating Committee"—sufficiently limits the authorization provided by paragraph (b)(iv)(A) without adding the word "only" in the sentence described above. The Commission is, however, modifying the last phrase of paragraph (b)(iv)(A), "or as may be otherwise required by law," to read, "or as may be otherwise required by Applicable Law." The modification is appropriate because it uses a term specifically defined in the Proposed CT Plan, thus adding clarity to the

348 See id.

349 See 2021 Approval Order, supra note 19, 86 FR at 44182-89, 44222-24.

350 See id. at 44188, 44223.

application of the phrase, and because the modification will make paragraph (b)(iv)(A) consistent with paragraph (b)(iii)(A)(4) as proposed, which also uses the term "Applicable Law."

For the reasons discussed above, the Commission is approving paragraph (b)(iv) of Exhibit C as modified.

6. The Processors; Information; Indemnification

Article V of the Proposed CT Plan sets forth the provisions related to the Processors.

(a) General Functions of the Processors

Pursuant to Article V, Section 5.1, the Company, under the direction of the Operating Committee, shall be required to enter into agreements with the Processors obligating the Processors to perform certain processing functions on behalf of the Company (the "Processor Services Agreements").[351] The Proposed CT Plan specifies that, among other things, the Company shall require the Processors to collect from the Members, and consolidate and disseminate to Vendors and Subscribers, Transaction Reports and Quotation Information in Eligible Securities in a manner designed to ensure the prompt, accurate, and reliable collection, processing, and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner.[352]

Proposed Section 5.1 is identical to the corresponding provision of the 2021 CT Plan approved by the Commission,[353] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing this provision, and the Commission is approving Section 5.1 as proposed.

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351 See Article V, Section 5.1 of the Proposed CT Plan.

352 See id.

353 See 2021 Approval Order, supra note 19, 86 FR at 44190-91, 44215.

(b) Evaluation of the Processors

Article V, Section 5.2 of the Proposed CT Plan requires that the Processors' performance of their functions under the Processor Services Agreements shall be subject to review at any time as determined by an affirmative vote of the Operating Committee, provided, however, that a review will be conducted at least once every two calendar years but not more than once each calendar year unless the Processors have materially defaulted under the Processor Services Agreement and the default has not been cured within the applicable cure period established in the Processor Services Agreement, in which case such limitations will not apply.[354] This section further provides that the Operating Committee may review the Processors at staggered intervals.[355]

Proposed Section 5.2 is identical to the corresponding provision of the 2021 CT Plan approved by the Commission,[356] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing this provision, and the Commission is approving Section 5.2 as proposed.

(c) Process for Selecting New Processors

Article V, Section 5.3 of the Proposed CT Plan requires that the Operating Committee, by an affirmative vote pursuant to Section 4.3 of the Proposed CT Plan,[357] establish procedures for selecting a new Processor (the "Processor Selection Procedures").[358] The Proposed CT Plan requires that the Processor Selection Procedures be established no later than upon the termination

354 See Article V, Section 5.2 of the Proposed CT Plan.

355 See id.

356 See 2021 Approval Order, supra note 19, 86 FR at 44191-92, 44215.

357 See Article V, Section 5.3(a) of the Proposed CT Plan.

358 See id.

or withdrawal of a Processor or the expiration of a Processor Services Agreement with a Processor.[359] The Processor Selection Procedures are required to set forth, at a minimum: (i) the minimum technical and operational requirements to be fulfilled by the Processor; (ii) the criteria for selecting the Processor; (iii) the entities (other than Voting Representatives) that are eligible to comment on the selection of the Processor; and (iv) the entity that will: (A) draft the Operating Committee's request for proposal for a new Processor; (B) assist the Operating Committee in evaluating bids for the new Processor; and (C) otherwise provide assistance and guidance to the Operating Committee in the selection process.[360] The Operating Committee, as part of the process of establishing the Processor Selection Procedures, is permitted to solicit and consider the timely comment of any entity affected by the operation of the Proposed CT Plan.[361]

Section 5.3 provides that the Operating Committee does not need to establish Processor Selection Procedures "if the Operating Committee initially selects the CQ Plan and CTA Plan's processor and the UTP Plan's processor to provide the same services to the Company that are currently provided under the CQ Plan, CTA Plan, and UTP Plan."[362] In the Transmittal Letter, the SROs state that, because the focus of the Amended Governance Order is the selection of a new independent Administrator rather than new Processors, the SROs believe it is reasonable for the Operating Committee to have the option of continuing with the current processors without having to go through an extensive procedure for selecting the processors.[363] The SROs state that

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359 See id.

360 See Article V, Section 5.3(b)(i)(A)-(C) of the Proposed CT Plan.

361 See Article V, Section 5.3(a) of the Proposed CT Plan.

362 Id.

363 See Letter from James P. Dombach, Davis Wright Tremaine LLP, to Vanessa Countryman, Secretary, Commission, at 2 (Oct. 23, 2023) ("Transmittal Letter").

this option would also allow for quicker implementation of the plan by allowing the Operating Committee to focus on the selection of the new Administrator.[364]

With respect to Section 5.3(a), one commenter states that it supports the proposal to provide the Operating Committee with the option of selecting an existing NMS plan processor to serve as processor for the Proposed CT Plan, provided that selection of the current processor is for the sole purpose of expediting transition to the competing consolidator model, and that such processor be fully retired at the end of the transition period.[365] Another commenter agrees that it is reasonable for the Operating Committee to have the option to continue with the current processors.[366] This commenter states its "expectation" that the Commission and the SROs "will promptly take the requisite steps necessary to transition to a competitive decentralized consolidation model for consolidated market data such that the role of a CT Plan Processor is time-limited, mitigating the need to create new procedures for Plan Processor selection."[367]

The establishment of Processor Selection Procedures is appropriate, as proposed, because the existing exclusive SIP model will continue to operate during the transition to the competing consolidator model, and the proposed Selection Procedures are reasonably designed to help ensure that the Operating Committee establishes a process that governs the selection of a new Processor for the Proposed CT Plan through a fair, transparent, and competitive process. The Commission agrees with the commenter, that it is reasonable to provide the Operating Committee with the option of initially selecting the current processors to provide the same services under the Proposed CT Plan without having to establish procedures for their selection,

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364 See Transmittal Letter, supra note 363, at 2.

365 See Letter from Christina Qi, Chief Executive Officer, Luca Lin, Chief Technology Officer, Zach Banks, Engineering Director, Databento Inc., at 1-2 (Mar. 15, 2024) ("Databento Letter").

366 See Fidelity Letter, supra note 80, at 6.

367 Id.

as proposed in Section 5.3(a).[368] Providing the Operating Committee with this option should facilitate implementation of the Proposed CT Plan as the Operating Committee would not have to immediately undertake the extensive process for selecting and onboarding a new Processor, and may instead focus on the selection of the new Administrator and other key governance reforms necessary under the Proposed CT Plan.

Other than as discussed above, Section 5.3 of the Proposed CT Plan is substantively similar to the corresponding provisions of the 2021 CT Plan approved by the Commission.[369] For the reasons discussed above, the Commission is approving Article V, Section 5.3 as proposed.

(d) Transmission of Information to Processors by Members

Article V, Section 5.4 of the Proposed CT Plan sets forth the manner in which each Member is responsible for promptly collecting and transmitting to the Processors accurate Quotation Information and Transaction Reports as set forth in the Processor Services Agreements.[370] In particular, this section requires Members to include the following elements in their Quotation Information: (i) identification of the Eligible Security, using the listing market's symbol; (ii) the price bid and offered, together with size; (iii) for FINRA, the FINRA Participant along with the FINRA Participant's market participant identification or Member from which the quotation emanates; (iv) appropriate timestamps; (v) identification of quotations that are not firm; and (vi) through appropriate codes and messages, withdrawals and similar matters.[371] In the case of a national securities exchange, the Quotation Information must include the reporting

368 See Article V, Section 5.3 of the Proposed CT Plan.

369 See 2021 Approval Order, supra note 19, 86 FR at 44192, 44216.

370 See Article V, Section 5.4 of the Proposed CT Plan.

371 See Article V, Section 5.4(a)(ii)(A)-(F) of the Proposed CT Plan.

Participant's matching engine publication timestamp.[372] In the case of FINRA, the Quotation Information must include the quotation publication timestamp that FINRA's bidding or offering member reports to FINRA's quotation facility in accordance with FINRA rules.[373]

In addition, Section 5.4 requires Members to report the following elements to in their Transaction Reports to the Processor as set forth in the Processor Services Agreement: (i) identification of the Eligible Security, using the listing market's symbol; (ii) the number of shares in the transaction; (iii) the price at which the shares were purchased or sold; (iv) the buy/sell/cross indicator; (v) appropriate timestamps; (vi) the market of execution; and (vii) through appropriate codes and messages, late or out-of-sequence trades, corrections, and similar matters.[374]

Each Member must also (a) transmit Transaction Reports to the Processors as soon as practicable, but not later than ten seconds, after the time of execution, (b) establish and maintain collection and reporting procedures and facilities reasonably designed to comply with this requirement, and (c) designate as "late" any last sale price not collected and reported as described above or as to which the Member has knowledge that the time interval after the time of execution is significantly greater than the time period referred to above.[375] This section provides

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372 See Article V, Section 5.4(a)(iii)(A) of the Proposed CT Plan.

373 See Article V, Section 5.4(a)(iii)(B) of the Proposed CT Plan. In addition, proposed Section 5.4(a)(iii)(B) provides that if FINRA's quotation facility provides a proprietary feed of its quotation information, then the quotation facility will also furnish the Processors with the time of the quotation as published on the quotation facility's proprietary feed. FINRA shall convert any quotation times reported to it to nanoseconds and shall furnish such times to the Processors in nanoseconds since Epoch. See Article V, Section 5.4(a)(iii)(B) of the Proposed CT Plan.

374 See Article V, Section 5.4(b)(i)-(ii) of the Proposed CT Plan; Notice, supra note 4, 89 FR at 5015.

375 See Article V, Section 5.4(b)(iv) of the Proposed CT Plan; Notice, supra note 4, 89 FR at 5015.

that Members will seek to reduce the time period for reporting last sale prices to the Processors as conditions warrant.[376]

Section 5.4(c) of the Proposed CT Plan sets forth the symbols that shall be used to denote the applicable Member.[377]

Section 5.4 excludes the following types of transactions from being required to be reported to the Processors: (i) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution; (ii) transactions made in reliance on Section 4(a)(2) of the Securities Act of 1933; (iii) transactions in which the buyer and the seller have agreed to trade at a price unrelated to the current market for the security (e.g., to enable the seller to make a gift); (iv) the acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; (v) purchases of securities pursuant to a tender offer; (vi) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market; and (vii) transfers of securities that are expressly excluded from trade reporting under FINRA rules.[378]

Furthermore, Section 5.4(d) provides that each Member agrees, severally and not jointly, to indemnify and hold harmless and defend the Company, each other Member, the Processors, the Administrator, the Operating Committee, and each of their respective directors, officers, employees, agents, and Affiliates (each, a "Member Indemnified Party") from and against any and all loss, liability, claim, damage, and expense whatsoever incurred or threatened against such

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376 See id.

377 See Article V, Section 5.4(c) of the Proposed CT Plan.

378 See Article V, Section 5.4(b)(v)(A)-(G) of the Proposed CT Plan (as adopted).

Member Indemnified Party as a result of a system error or disruption at such Member's Market affecting any Transaction Reports, Quotation Information, or other information reported to the Processors by such Member and disseminated by the Processors to Vendors and Subscribers. This section further provides that this indemnity shall be in addition to any liability that the indemnifying Member may otherwise have.[379]

The provisions of Section 5.4 relating to each Member's obligations to collect and transmit to the Processors accurate and reliable Quotation Information and Transaction Reports are reasonably designed to facilitate the collection and dissemination of consolidated equity market data for NMS stocks for the beneficial use of investors and the market.[380] Section 5.4 differs substantively from the corresponding provisions of the 2021 CT Plan approved by the Commission in that it (1) replaces the term "Participant" with "Member," which difference is appropriate to correspond with the definitions in the Proposed CT Plan, and (2) updates, in Section 5.4(c), the symbols used to denote the applicable Member, which difference is appropriate to help ensure the accuracy of this information. The Commission received no comments addressing this provision, which was not required to be modified by the Amended Governance Order, and the Commission is approving Section 5.4, as renumbered and proposed.

(e) Operational Issues

Article V, Section 5.5 of the Proposed CT Plan requires each Member to be responsible for collecting and validating quotes and last sale reports within its own system prior to

379 See Article V, Section 5.4(d)(i) of the Proposed CT Plan (as adopted). Section 5.4(d)(ii) of the Proposed CT Plan specifies the procedures for addressing claims by a Member Indemnified Party.

380 See 2021 Approval Order, supra note 19, 86 FR at 44193.

transmitting this data to the Processors.[381] This section also requires each Member to promptly notify the Processors whenever a level of trading activity or unusual market conditions prevent such Member from collecting and transmitting Transaction Reports or Quotation Information to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its market.[382] This provision further requires the Member to resume collecting and transmitting Transaction Reports and Quotation Information to the Processors as soon as the condition or event is terminated.[383] In the event of a system malfunction that prevents a Member or its members from transmitting Transaction Reports or Quotation Information to the Processors, the Member is required to promptly notify the Processors of such event or condition.[384] Upon receiving such a notification, Section 5.5 of the Proposed CT Plan requires the Processors to take appropriate action, including either closing the quotation or purging the system of the affected quotations.[385]

Section 5.5 is identical to the corresponding provision of the 2021 CT Plan approved by the Commission[386] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Section 5.5 of the Proposed CT Plan, and the Commission is approving Section 5.5 as proposed.

7. The Administrator

Article VI of the Proposed CT Plan sets forth provisions relating to the Administrator.

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381 See Article V, Section 5.5(a) of the Proposed CT Plan. Section 5.5(b) of the Proposed CT Plan provides that each Member may utilize a dedicated Member line into the Processors to transmit Transaction Reports and Quotation Information to the Processors.

382 See Article V, Section 5.5(c) of the Proposed CT Plan.

383 See id.

384 See id.

385 See id.

386 See 2021 Approval Order, supra note 19, 86 FR at 44194.

(a) General Functions of the Administrator

Pursuant to Article VI, Section 6.1, the Company, under the direction of the Operating Committee, will be required to enter into an agreement with the Administrator (the "Administrative Services Agreement") obligating the Administrator to perform certain administrative functions on behalf of the Company, including: recordkeeping; administering vendor and subscriber contracts; administering fees, including billing, collection, and auditing of vendors and subscribers; administering distributions; tax functions of the Company; the preparation of the Company's audited financial reports; and support of Company governance.[387]

Section 6.1 of the Proposed CT Plan is identical to the corresponding provision of the 2021 CT Plan approved by the Commission, except that the provision now includes "support of Company governance" among the Administrator's functions.[388] Including this additional function for the Administrator is reasonable given the extensive responsibilities of the Administrator for supporting the operations of the plan. This section was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Section 6.1, and for the reasons discussed above, the Commission is approving Section 6.1 as proposed.

(b) Independence of the Administrator

Article VI, Section 6.2 of the Proposed CT Plan requires that the Administrator selected by the Operating Committee may not be owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own proprietary market data products.[389] Section 6.2 of the Proposed CT Plan is identical to the corresponding provision of the 2021 CT

387 See Article VI, Section 6.1 of the Proposed CT Plan.

388 See 2021 Approval Order, supra note 19, 86 FR at 44194-95.

389 See Article VI, Section 6.2 of the Proposed CT Plan.

Plan approved by the Commission[390] and is consistent with the requirements of the Amended Governance Order.[391]

One commenter supports having an independent administrator, stating that an independent administrator with a unique balance of experience and expertise, but without conflict, will be the single most important factor for the successful transition to a unified consolidated tape.[392] Another commenter states that the Proposed CT Plan should not only exclude SROs from serving as Administrator, but also data vendors that sell proprietary market data products or consolidate proprietary market data for sale as their own product.[393] According to this commenter, vendors may provide users with an alternative to consolidated equity market data offered under the Proposed CT Plan,[394] compromising the independence of such a vendor.[395] The commenter recommends that, Section 6.2 of the Proposed CT Plan should be modified to read as follows: The Administrator may not be owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own proprietary market data products or that of single or multiple Participants.[396]

The Commission addressed a similar comment in the 2021 Approval Order, and, as it stated in that order, the Commission did not mandate in the Governance Order that non-SRO data vendors serve as the new independent Administrator.[397] Nor are such entities the only viable

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390 See 2021 Approval Order, supra note 19, 86 FR at 44194-99, 44217.

391 See Amended Governance Order, supra note 23, 88 FR at 61640.

392 See Letter from Mark Schaedel, CEO, DataBP, LLC, at 3-4 (Feb.23.2024) ("dataBP Letter").

393 See Nasdaq Letter, supra note 109, at 7.

394 See id.

395 See id.

396 See id. (emphasis in original).

397 See 2021 Approval Order, supra note 19, 86 FR at 44197.

alternative Administrator.[398] The Commission chose to address one substantial, inherent conflict of interest when it decided that any plan Administrator cannot be owned or controlled by a corporate entity that offers for sale its own proprietary equity market data products.[399] The Proposed CT Plan, as proposed and approved, under the direction of the Operating Committee, can exercise discretion in the selection of the new Administrator, including ensuring that any potential conflict of interest does not compromise the independence of the selected Administrator.[400] Furthermore, the Operating Committee of the Proposed CT Plan would not have any incentive to choose as the Administrator a non-SRO entity that would face a financial conflict of interest and act as a direct competitor to the SROs' proprietary data business.[401] The D.C. Circuit upheld the rationality of this reasoning.[402] And, for these same reasons, the Commission again declines to modify the restrictions on entities that can serve as Administrator in the manner suggested by the commenter.

Another commenter states that the scope of the independence requirement might be too narrow.[403] This commenter states that one or more exchange groups could seek to establish a

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398 See id.

399 See id.

400 See Article IV, Section 4.1(a)(i) of the Proposed CT Plan (providing, in part, that "the Operating Committee shall have full and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company, and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Company, including … selecting, overseeing, specifying the role and responsibilities of, and evaluating the performance of, the Administrator"). See also 2021 Approval Order, supra note 19, 86 FR at 44197.

401 See 2021 Approval Order, supra note 19, 86 FR at 44197.

402 See Nasdaq v. SEC, supra note 20, 38 F.4th at 1143 ("Although petitioners contend that non-SRO data vendors face 'the exact same conflict' as SROs selling competing data products, the conflict is not the same because, as the Commission notes, the SROs have 'sufficient voting power' and 'incentive' to ensure that any non-SRO chosen to serve as administrator 'would [not] face a financial conflict of interest and act as a direct competitor to the SROs' proprietary data business.'" (quoting 2021 Approval Order, supra note 19, 86 FR at 44197) (internal citations omitted).

403 See SIFMA Letter, supra note 109, at 5. The commenter states that such a scenario could call into question the independence of the new Administrator. See id.

new "independent" administrator by spinning off or selling to a new corporate entity the administrator functions, even though all of the employees of such a new entity would remain the same or nearly the same after the spin-off or sale.[404]

With respect to this concern, an Administrator of the Proposed CT Plan would not be "independent" of a disqualified entity if its employees were also employees of that disqualified entity. Because the Administrator and its employees would have access to "sensitive information of significant commercial or competitive value,"[405] those employees would have a conflict of interest if simultaneously employed by an entity that offers for sale its own proprietary data products, which would defeat the purpose of the independence requirements in the Proposed CT Plan for the Administrator, as well as the limitations on sharing information under the Confidentiality Policy.[406] Therefore, it is appropriate to further protect against the potential for misuse of sensitive information by modifying Section 6.2 to add an additional requirement: "The Administrator may not employ any person who is also employed by a corporate entity that, either directly or via a subsidiary, offers for sale its own PDP." More generally, as discussed above,[407] the Operating Committee can also exercise discretion in the selection of the new Administrator to ensure that any potential conflict of interest does not compromise the independence of the selected Administrator, and on an ongoing basis, the Administrator will be required to disclose all material facts necessary to identify potential conflicts of interest.[408]

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404 See id.

405 Amended Governance Order, supra note 23, 88 FR at 61639.

406 See supra Section II.B.5(l) (discussing Confidentiality Policy of the Proposed CT Plan).

407 See supra note 400 and accompanying text.

408 See supra notes 313-316 and accompanying text.

Other than as modified by the Commission, Section 6.2 of the Proposed CT Plan is identical to the corresponding provision of the 2021 CT Plan approved by the Commission[409] and was not required to be modified by the Amended Governance Order. For the foregoing reasons, the Commission is approving Article V, Section 6.2 as modified.

(c) Evaluation of the Administrator

Article VI, Section 6.3 of the Proposed CT Plan sets forth the provisions for the evaluation of an Administrator.[410] Section 6.3 is identical to the corresponding 2021 CT Plan provisions approved by the Commission[411] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Section 6.3 of the Proposed CT Plan, and the Commission is approving Article VI, Section 6.3 as proposed.

(d) Process for Selecting New Administrator

Article VI, Section 6.4 of the Proposed CT Plan sets forth the provisions for the selection of an Administrator.[412] Section 6.4 of the Proposed CT Plan is identical to the corresponding provision of the 2021 CT Plan approved by the Commission[413] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing this provision, and the Commission is approving Section 6.4 as proposed.

(e) Interim Administrator(s)

One commenter states that the Commission should modify the Proposed CT Plan to allow the Operating Committee to appoint one of the current administrators of the Equity Data Plans as interim Administrator until such time as the Operating Committee selects and onboards a new

409 See 2021 Approval Order, supra note 19, 86 FR at 44217.

410 See Article VI, Section 6.3 of the Proposed CT Plan.

411 See 2021 Approval Order, supra note 19, 86 FR at 44198.

412 See Article VI, Section 6.4 of the Proposed CT Plan.

413 See 2021 Approval Order, supra note 19, 86 FR at 44198-99, 44217.

independent Administrator that meets the requirements for an independent administrator under the Amended Governance Order.[414] The commenter states that appointment of such an interim Administrator would allow the Plan to become operative while the Operating Committee works towards full implementation of all required Plan elements.[415] This commenter states that selection and onboarding of an independent Administrator would, according to the proposed schedule, account for the majority of the 30-month implementation period.[416] The commenter is also concerned that the selection and onboarding of a new Administrator is a potential source of delay, as the process is not fully within the control of the Operating Committee. Thus, the commenter states that there is no need for the implementation of other governance reforms to be tied to the new Administrator.[417] Another commenter states that selecting an interim administrator, as suggested,[418] is a good idea because, once selected, this interim administrator could start developing plan policies that are not dependent on the independent administrator, possibly drawing on the expertise of members of the Market Data Administration subcommittee of the Equity Data Plans.[419] This commenter states that the goal should be to implement the plan at the earliest possible time, and that appointing an interim administrator would advance that objective.[420]

414 See MEMX Letter, supra note 109, at 4, 7-9.

415 See id.

416 See id. at 6-8.

417 See id. at 8.

418 See id. at 5-7.

419 See Jordan Letter, supra note 84, at 2.

420 See id. at 1-2.

The Commission agrees with commenters[421] that timely implementation of the Proposed CT Plan is important and that the Proposed CT Plan should provide for an option, such as that suggested by a commenter,[422] by which key governance reforms, such as those governing the allocation of SRO votes for action by the Operating Committee, could be implemented before the proposed 30 months. Interim Administrator(s) that are already familiar with, and have vast experience in, the operation of the Equity Data Plans could assist in having the Proposed CT Plan become operative prior to the selection and onboarding of an independent Administrator that the SROs have acknowledged would be a lengthy process.[423] Although commenters have suggested the appointment of a single interim administrator, the ability of the Operating Committee to pick either or both of the current administrators of the Equity Data Plans as Interim Administrator(s) may facilitate the timely achievement of the date by which the Proposed CT Plan will become operative.[424] The flexibility to employ either or both of the current administrators of the Equity Data Plans would permit the Operating Committee, if it so chooses, to postpone the work involved in transitioning from one administrator to another until such time as a permanent, independent Administrator has been selected and thus to postpone this effort until closer to the Operative Date.

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421 See MEMX Letter, supra note 109, at 5-7; Jordan Letter, supra note 84, at 2; dataBP Letter, supra note 392, at 3-4.

422 See supra note 422 and accompanying text.

423 See Notice, supra note 4, 89 FR at 5027-29 (Exhibit F to the Proposed CT Plan); see also infra section II.B.15(a) (discussing the implementation timeline for the Proposed CT Plan).

424 See Article I, Section 1.1(56) of the Proposed CT Plan (as modified; defining the term "Operative Date" as "the date that (i) the Members conduct, through the Company, the Processor and Administrator functions related to the public dissemination of real-time consolidated equity market data for Eligible Securities required by the Commission to be performed by the Members under the Exchange Act and the rules and regulations thereunder and (ii) the CQ Plan, CTA Plan, and UTP Plan cease their operations").

Therefore, the Commission is modifying the Proposed CT Plan, to provide, in new Section 6.5, that the Operating Committee may select one or more of the current administrators of the CTA Plan, CQ Plan, and UTP Plan to perform the general functions of the Administrator under Section 6.1 of the Proposed CT Plan on an interim basis during the implementation of the Plan, consistent with the timeline set forth in Article XIV of this Agreement ("Interim Administrator(s)"), notwithstanding the provisions with respect to the independence of the Administrator (Section 6.2) and the selection process of the Administrator (Section 6.4). This modification is appropriate to enhance efficiencies associated with the completion of actions necessary for a timely implementation of the Proposed CT Plan.[425]

8. Regulatory Matters

Article VII of the Proposed CT Plan sets forth provisions governing regulatory matters.

(a) Regulatory and Operational Halts

Section 7.1 of Article VII addresses regulatory and operational halts, and it is unchanged from the corresponding provision of the 2021 CT Plan approved by the Commission,[426] with one exception. That exception is the addition of new paragraph 7.1(c)(ii)(D), which would permit notice of a regulatory halt to be disseminated by "a notification via an alternate Processor, if available."

One commenter states that the only acceptable backup for a processor should be an automated regulatory halt message notification by an alternate Processor, as proposed in paragraph (D) of Section 7.1(c)(ii), and that, for this reason, paragraphs (A)-(C) of Section

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425 See 15 U.S.C. 78k–1(c)(1)(B) (to ensure the "prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information.").

426 See 2021 Approval Order, supra note 19, 86 FR at 44199-200, 44217-18.

7.1(c)(ii) should be deleted.[427] This commenter further states that the current two processors should serve as backups for each other in the same manner that the NYSE and Nasdaq serve as backups for each other for Trade Reporting Facility and closing auctions purposes. The commenter also states that if the Proposed CT Plan were to move to a single processor prior to future implementation of competing consolidators, the plan should address the single point of failure that would exist.[428]

While the proposal to disseminate Regulatory Halt notices through an alternate Processor in the event another Processor is unable to disseminate the notices is reasonable, the Commission does not share the commenter's view that this should be the only permitted backup, to the exclusion of all other alternatives in proposed paragraph 7.2(c)(ii)[429]—namely, notification via a proprietary data product, a posting on a publicly available Member website, or system status messages—absent a representation from the SROs that such an alternate Processor backup functionality has been developed and tested. Absent such a representation, modifying Section 7.1 as the commenter proposes would create uncertainty with respect to compliance with requirements under this section, as well the potential for unnecessary delays in the implementation of the Proposed CT Plan. For the foregoing reasons, the Commission is approving Section 7.1 of the Proposed CT Plan as proposed.

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427 See SIFMA Letter, supra note 109, at 4-5.

428 See id. at 5.

429 See id. at 4-5.

(b) Hours of Operation of the System

Section 7.2 of Article VII of the Proposed CT Plan governs the hours of operation during which time Quotation Information and Transaction Reports must be entered by Members and will be disseminated by the Processor.[430]

Section 7.2 of the Proposed CT Plan differs from the corresponding provision of the 2021 CT Plan approved by the Commission in two respects. First, Section 7.2(a) clarifies that, during Regular Hours, Transaction Reports shall be entered by Members pursuant to that section "for executions that occur from 9:30 a.m. until 4:00:00 p.m. ET" rather than "between 9:30 a.m. and 4:00:10 p.m. ET." Second, Section 7.2(b)(i) adds a parenthetical to the provision that, outside of Regular Hours, reports for transactions in Eligible Securities executed from 4:00 a.m. up to 9:30:00 a.m. ET "(or as otherwise designated by a Member as an execution occurring outside of Regular Trading Hours)" must be designated with a certain indicator to denote their execution outside normal market hours.[431] These differences are appropriate to provide greater specificity with respect to the information to be submitted pursuant to Section 7.2. The Commission is modifying proposed Section 7.2 to replace the reference to "Section 7.3" in paragraph (b)(iv) with "Section 7.2." This modification is appropriate to correct a typographical error because the reference in paragraph (b)(iv) of Section 7.2 is to "this Section," which in this context is Section 7.2 rather than Section 7.3, and because the Proposed CT Plan does not contain a section numbered "7.3." The Commission received no comments addressing this provision. For the

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430 See Article VII, Section 7.2 of the Proposed CT Plan.

431 See Article VII, Section 7.2(b)(i) of the Proposed CT Plan. Relatedly, Article VII, Section 7.2(b)(i) of the 2021 CT Plan read as follows: "Members that execute transactions in Eligible Securities outside of Regular Trading Hours, shall report such transactions as follows: (i) transactions in Eligible Securities executed between 4:00 a.m. and 9:29:59 a.m. ET and between 4:00:01 p.m. and 8:00 p.m. ET, shall be designated with an appropriate indicator to denote their execution outside normal market hours." See 2021 Approval Order, supra note 19, 86 FR at 44218.

reasons discussed above, the Commission is approving Section 7.2 of the Proposed CT Plan as modified.

9. Capital Contributions; Capital Accounts

Article VIII of the Proposed CT Plan sets forth the provisions related to the establishment and maintenance of capital accounts for the Members, additional capital contributions to the Company, and the distribution of revenues of the Company to the Members. Specifically, Article VIII, Section 8.1 of the Proposed CT Plan requires a separate capital account to be established by the Company and maintained by the Administrator for each Member.[432] In addition, the Proposed CT Plan specifies the formula for crediting and debiting a Member's capital account.[433]

Section 8.1(b) of the Proposed CT Plan further provides that the fair market value of contributed, distributed, or revalued property shall be agreed to by the Operating Committee or, if there is no such agreement, by an appraisal.[434]

Section 8.2 of the Proposed CT Plan specifies that no Member will be obligated or permitted to make any additional contribution to the capital of the Company except with the approval of the Operating Committee.[435]

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[432] See Article VIII, Section 8.1(a) of the Proposed CT Plan.

[433] See id.

[434] See Article VIII, Section 8.1(b) of the Proposed CT Plan. Additionally, Section 8.1(c) of the Proposed CT Plan provides that the provisions of Section 8.1 and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with be interpreted and applied in a manner consistent with such Treasury Regulations. See id.

[435] See Article VIII, Section 8.2 of the Proposed CT Plan.

Section 8.3 of the Proposed CT Plan requires the distributions of revenues of the Company to the Members at the times and in the aggregate amounts set forth in Exhibit D to the Proposed CT Plan.[436]

Article VIII of the Proposed CT Plan differs from the corresponding provision of the 2021 CT Plan approved by the Commission[437] in that it provides that the capital accounts will be established by the Company and maintained by the Administrator, whereas in the corresponding provision of the 2021 CT Plan it was the Company that both established and maintained such accounts.[438]

The Commission received no comments on Article VIII of the Proposed CT Plan. The function of administering the capital accounts is reasonably within the scope of the general functions of the Administrator under Section 6.1 of the Proposed CT Plan.[439] For this reason, and as the other provisions in Article VIII are substantively similar to the corresponding provisions of the 2021 CT Plan approved by the Commission[440] and were not required to be modified by the Amended Governance order, the Commission is approving Article VIII of the Proposed CT Plan as proposed.

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436 See Article VIII, Section 8.3 of the Proposed CT Plan (providing, in part, that "[e]xcept as set forth in this Section 8.3 and Section 11.2, and subject to the provisions of Section 13.1, Distributions shall be made to the Members at the times and in the aggregate amounts set forth in Exhibit D. Notwithstanding any provisions to the contrary contained in this Agreement, the Company shall not make a Distribution to a Member on account of its interest in the Company if such Distribution would violate Section 18-607 of the Delaware Act or other Applicable Law").

437 See 2021 Approval Order, supra note 19, 86 FR at 44200, 44218-19.

438 See id. at 44200, 44218.

439 See Article VI, Section 6.1 of the Proposed CT Plan (providing, in part, that "the Administrator shall perform administrative functions on behalf of the Company including recordkeeping; administering Vendor and Subscriber contracts; administering Fees, including billing, collection, and auditing of Vendors and Subscribers; administering Distributions; tax functions of the Company; and the preparation of the Company's audited financial reports; and support of Company governance").

440 See 2021 Approval Order, supra note 19, 86 FR at 44200, 44218-19.

10. Allocations

Article IX of the Proposed CT Plan sets forth the provisions related to the allocation of profits and losses of the Company to Members. Pursuant to Article XI, Section 9.1, the profits and losses of the Company must be determined for each fiscal year in a manner consistent with GAAP.[441] Article IX, Section 9.2 provides that profits and losses of the Company must be allocated among the Members in accordance with Exhibit D of the Proposed CT Plan.[442] Section 9.2 also specifies the procedures for certain allocation events in accordance with federal tax code regulations.[443]

Exhibit D of the Proposed CT Plan outlines the methodology for revenue sharing among Members.

Paragraphs (b), (c), and (e) through (i) of Exhibit D set forth the definitions used for determining the revenue sharing among Members, including "Security Income Allocation,"[444] "Volume Percentage,"[445] "Trading Share,"[446] "Trade Rating,"[447] "Quoting Share,"[448] "Quote Rating,"[449] and "Quote Credits."[450]

Paragraph (d) of Exhibit D specifies a cap on the Net Distributable Operating Income of the Proposed CT Plan.[451]

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441 See Article IX, Section 9.1 of the Proposed CT Plan.

442 See Article IX, Section 9.2(a) of the Proposed CT Plan.

443 See Article IX, Section 9.2(b)-(d) of the Proposed CT Plan.

444 See Paragraph (b) of Exhibit D to the Proposed CT Plan.

445 See Paragraph (c) of Exhibit D to the Proposed CT Plan.

446 See Paragraph (e) of Exhibit D to the Proposed CT Plan.

447 See Paragraph (f) of Exhibit D to the Proposed CT Plan.

448 See Paragraph (g) of Exhibit D to the Proposed CT Plan.

449 See Paragraph (h) of Exhibit D to the Proposed CT Plan.

450 See Paragraph (i) of Exhibit D to the Proposed CT Plan.

451 See Paragraph (d) of Exhibit D to the Proposed CT Plan.

Paragraph (j) of Exhibit D specifies the formula for determining the Net Distributable Operating Income for any calendar year.[452]

Paragraph (k) of Exhibit D specifies that once a new Member implements a Processor-approved electronic interface with the Processors, the Member will become eligible to receive revenue.[453]

Paragraph (l) of Exhibit D specifies the Company will cause the Administrator to provide Members with written estimates of each Member's quarterly Net Distributable Operating Income within 45 calendar days of the end of the quarter.[454]

Paragraph (m) of Exhibit D specifies that the Company will cause the Administrator to submit to the Members a quarterly itemized statement setting forth the basis upon which Net Distributable Operating Income was calculated.[455]

One commenter suggests modifying the definition of "Net Distributable Operating Income" under paragraph (j) of Exhibit D to remove a 6.25% allocation to FINRA.[456] This commenter states that the proposed FINRA set-aside is a "historical artifact" and "inconsistent with the overall scheme of revenue distribution," which the commenter states bases revenue sharing on the contribution of each participant to market transparency.[457] The commenter states that "payments to FINRA, like that of all participants, should be based on the principle of

452 See Paragraph (j) of Exhibit D to the Proposed CT Plan.

453 See Paragraph (k) of Exhibit D to the Proposed CT Plan.

454 See Paragraph (l) of Exhibit D to the Proposed CT Plan.

455 See Paragraph (m) of Exhibit D to the Proposed CT Plan.

456 See Nasdaq Letter, supra note 109, at 2, 6.

457 Id. at 6.

contribution to the market," and that the 6.25% adjustment should be removed from the calculation.[458]

In response to the commenter, another commenter opposes removal of the 6.25% FINRA set-aside from the calculation of "Net Distributable Operating Income" under paragraph (j) of Exhibit D.[459] This commenter states that because both the inclusion of OTC Equity Data and the associated 6.25% revenue allocation were in the 2021 CT Plan approved by the Commission, and these provisions were not challenged in the subsequent litigation, the Amended Governance Order requires that these provisions remain in the Proposed CT Plan.[460] This commenter further states that the Market Data Infrastructure Rules ("MDI Rules")[461] will ultimately resolve the treatment of OTC Equity Data under the Proposed CT Plan,[462] in part because the final MDI Rules will require FINRA to identify and build alternative means for distributing OTC Equity Data to investors.[463] The commenter states that, until the MDI Rules are implemented, the most efficient way to provide investors with this important information is to include OTC Equity data together with NMS stock data under the applicable NMS Plan.[464] Finally, the commenter states that the 6.25% revenue allocation is an integral part of the overall revenue allocation formula and

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458 Id.

459 See Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, Financial Industry Regulatory Authority, Inc., dated May 20, 2024 ("FINRA Letter") at 2-4.

460 See id. at 3.

461 The "MDI Rules" as used in this order, and as relevant to this order, are Rules 600, 603, and 614 of Regulation NMS. 17 CFR 242.600, 242.603, 242.614. See also Securities Exchange Act Release No. 90610 (Dec. 9, 2020), 86 FR 18596 (Apr. 9, 2021) (File No. S7-03-20) ("MDI Rules Release"); Securities Exchange Act Release No. 90610A (May 24, 2021), 86 FR 29195 (June 1, 2021) (File No. S7-03-20) (technical correction to MDI Rules Release). Several exchanges filed petitions for review challenging the MDI Rules in the D.C. Circuit, which were denied on May 24, 2022. See The Nasdaq Stock Market LLC, et al. v. SEC, No. 21-1100 (D.C. Cir. May 24, 2022).

462 See id.

463 See id.

464 See id.

reflects the Commission-approved determination that such revenue is appropriate, and accordingly recommends that the Commission retain it in Exhibit D.[465]

As stated in the Amended Governance Order, the provisions of the 2021 Approval Order that were not challenged—including the 6.25% set-aside for FINRA—continue to be appropriate for the Proposed CT Plan.[466] Separately, the Commission agrees that the provisions of the Commission's MDI Rules will resolve this issue,[467] and that when the Proposed CT Plan becomes the effective NMS plan for dissemination of equity market data under the MDI Rules, the Proposed CT Plan will no longer include OTC data within the definition of "core data," and no revenue allocation of plan revenues for OTC data will be necessary or appropriate.[468] Moreover, because the provisions of the Proposed CT Plan related to the allocation of profits and losses of the Company to the Members, including those relating to the 6.25% revenue allocation to FINRA, are consistent with the corresponding provision of the 2021 CT Plan,[469] it is not necessary to modify the Proposed CT Plan as suggested by the commenter.

Separately, one commenter disagrees with the provisions in Exhibit D relating to revenue sharing, stating that the "entirety of Exhibit D revenue sharing scheme is nothing more than SROs meeting behind closed doors in dividing the cake of SIPs/CC revenue."[470] This commenter states that costs should be minimized because "putting data in motion from one place to another

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465 See id. at 2, 4.

466 See Amended Governance Order, supra note 23, 88 FR at 61631. See also 2021 Approval Order, supra note 19, 86 FR at 44201-202.

467 See 2021 Approval Order, supra note 19, 86 FR at 44201 (citing Market Data Infrastructure, Securities Exchange Act Release No. 90610 (Dec. 9, 2020), 86 FR 18596 (File No. S7-03-20) (Final Rule)).

468 See id.

469 See 2021 Approval Order, supra note 19, 86 FR at 44224.

470 Data Boiler Letter, supra note 208, at 5.

incurs no costs."[471] According to this commenter, quote and trade distribution should be rewarded differently, and suggests adopting a format paralleling that of the music industry.[472]

In response to the comment that the proposed revenue sharing arrangement is unjustified, and the suggestion that the format for quote and trade distribution should parallel that of the music industry,[473] it is unclear from the comment how revenue sharing in one industry may be applicable to the Proposed CT Plan. Furthermore, the SROs as operators of the SIPs are well suited to determine how the revenues are distributed among the SROs.[474]

The provisions of the Proposed CT Plan related to the allocation of profits and losses of the Company to the Members are identical to those of the 2021 CT Plan approved by the Commission,[475] and are consistent with the requirements of the Amended Governance Order.[476] For the reasons discussed above, the Commission is approving Article IX as proposed.

11. Records and Accounting; Reports

Article X of the Proposed CT Plan sets forth the Company's obligations and policies related to accounting and tax matters. Article X, Section 10.1 of the Proposed CT Plan specifies that the Operating Committee shall determine all matters concerning accounting procedures of the Company and maintain an accounting system that enables the Company to produce accounting records and information substantially consistent with GAAP.[477] Article X, Section 10.2 of the Proposed CT Plan specifies that the Company is intended to be treated as a

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471 Id.

472 See id.

473 See id.

474 See Governance Order, supra note 11, 85 FR at 28728.

475 See 2021 Approval Order, supra note 19, 86 FR at 44200-02, 44224-25.

476 See id. at 44224.

477 See Article X, Section 10.1(a) of the Proposed CT Plan.

partnership for federal, state, and local income tax purposes.[478] Pursuant to this section, all tax returns are required to be prepared in a manner consistent with the Distributions made in accordance with Exhibit D to the Proposed CT Plan.[479] Article X, Section 10.3 of the Proposed CT Plan sets forth provisions regarding the functions and duties of an entity appointed as the "Partnership Representative" of the Company as required by the federal tax code.[480] The Partnership Representative is required to use reasonable efforts to notify each Member of all significant matters that may come to its attention and to forward to each Member copies of all significant written communications it receives in such capacity.[481] The Partnership Representative must also consult with the Members before taking any material actions with respect to tax matters and must not compromise or settle any tax audit or litigation affecting the Members without the approval of a majority of Members.[482]

Sections 10.1-10.3 are identical to the corresponding provisions of the 2021 CT Plan approved by the Commission,[483] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Article X, and the Commission is approving the provisions of Article X as proposed.

12. Dissolution and Termination

(a) Dissolution of the Company

Article XI, Section 11.1 of the Proposed CT Plan specifies the events that would trigger the dissolution of the Company, including: (i) unanimous written consent of the Members to

478 See Article X, Section 10.2(a) of the Proposed CT Plan.

479 See Article X, Section 10.2(b) of the Proposed CT Plan.

480 See Article X, Section 10.3(a) of the Proposed CT Plan.

481 See Article X, Section 10.3(b) of the Proposed CT Plan.

482 See Article X, Section 10.3(c) of the Proposed CT Plan.

483 See 2021 Approval Order, supra note 19, 86 FR at 44202.

dissolve the Company; (ii) the sale or other disposition of all or substantially all the Company's assets outside the ordinary course of business; (iii) an event which makes it unlawful or impossible for the Company business to be continued; (iv) the withdrawal of one or more Members such that there is only one remaining Member; or (v) the entry of a decree of judicial dissolution under Section 18-802 of the Delaware Act.[484]

Section 11.1 of the Proposed CT Plan is identical to the corresponding one in the 2021 CT Plan approved by the Commission[485] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Section 11.1, and the Commission is approving this provision of the Proposed CT Plan as proposed.

(b) Liquidation and Distribution

Article XI, Section 11.2 of the Proposed CT Plan sets forth the procedures for the liquidation and distribution of assets following the dissolution of the Company. Specifically, Section 11.2 requires the Members to appoint a liquidating trustee to wind up the affairs of the Company by (i) selling its assets in an orderly manner (so as to avoid the loss normally associated with forced sales), and (ii) applying and distributing the proceeds of such sale, together with other funds held by the Company: (a) first, to the payment of all debts and liabilities of the Company; (b) second, to the establishments of any reserves reasonably necessary to provide for any contingent recourse liabilities and obligations; (c) third, to the Members in accordance with Exhibit D of the Proposed CT Plan; and (d) fourth, to the Members as determined by a majority of Members.[486]

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484 See Article XI, Section 11.1 of the Proposed CT Plan.

485 See 2021 Approval Order, supra note 19, 86 FR at 44202.

486 See Article XI, Section 11.2 of the Proposed CT Plan.

Section 11.2 of the Proposed CT Plan is identical to the corresponding provision in the 2021 CT Plan approved by the Commission[487] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Section 11.2, and the Commission is approving Article XI, Section 11.2 of the Proposed CT Plan as proposed.

(c) Termination

Article XI, Section 11.3 of the Proposed CT Plan sets forth termination procedures following the dissolution of the Company. Specifically, Section 11.3 provides that each Member will receive a statement prepared by the independent accountants retained on behalf of the Company that shall set forth (i) the assets and liabilities of the Company as of the date of the final distribution of Company's assets under Section 11.2 of the Proposed CT Plan and (ii) the net profit or net loss for the fiscal period ending on such date, and upon completion of the dissolution, winding up, liquidation, and distribution of the liquidation proceeds, the Company will terminate.[488] Section 11.3 is identical to the corresponding provision in the 2021 CT Plan approved by the Commission[489] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing this provision, and the Commission is approving Article XI, Section 11.3 as proposed.

13. Exculpation and Indemnification

(a) Exculpation and Indemnification

Article XII, Sections 12.1 and 12.2 of the Proposed CT Plan provide broad liability, exculpation, and indemnification protections for SROs and Voting Representatives. Specifically, Section 12.1 provides that the liability of each Member and each individual currently or formerly

487 See 2021 Approval Order, supra note 19, 86 FR at 44202-03.

488 See Article XI, Section 11.3 of the Proposed CT Plan.

489 See 2021 Approval Order, supra note 19, 86 FR at 44203.

serving as an SRO Voting Representative (each, an "Exculpated Party") will be limited to the maximum extent permitted by applicable law or as otherwise expressly provided in the Proposed CT Plan "for any loss suffered in connection with a breach of any fiduciary duty, errors in judgment or other acts or omissions by such Exculpated Party." Section 12.2 provides indemnification to current or former SROs and Voting Representatives ("Company Indemnified Party") for losses from being a Party to a Proceeding.

The Commission is making a modification to Section 12.1 to delete "SRO" from the term "SRO Voting Representative," as used in this section. This modification is appropriate because the defined term in the Proposed CT Plan is "Voting Representative," and not "SRO Voting Representative."[490] Aside from the one modification to Section 12.1, the provisions in Sections 12.1 and 12.2. are identical to the corresponding provisions in the 2021 CT Plan approved by the Commission,[491] and were not required to be modified by the Amended Governance Order. The Commission received no comments addressing Sections 12.1 and 12.2 of the Proposed CT Plan, and the Commission is approving Sections 12.1 of the Proposed CT Plan as modified, and 12.2 of the Proposed CT Plan as proposed.

(b) Advance Payment

Article XII, Section 12.3 of the Proposed CT Plan provides for the payment of reasonable expenses incurred by a Company Indemnified Party who is a named defendant or respondent to a Proceeding, except that such Company Indemnified Party must repay such amount if it is ultimately determined that he or she is not entitled to indemnification.[492] This provision is

490 See Article I, Section 1.1(84) of the Proposed CT Plan (defining "Voting Representative").

491 See 2021 Approval Order, supra note 19, 86 FR at 44203-04.

492 See Article XII, Section 12.3 of the Proposed CT Plan.

identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[493] and was not required to be modified by the Amended Governance Order. The Commission received no comments on this provision, and the Commission is approving Section 12.3 of the Proposed CT Plan as proposed.

(c) Appearance as a Witness

Article XII, Section 12.4 of the Proposed CT Plan provides for the payment or reimbursement of reasonable out-of-pocket expenses incurred by a Company Indemnified Party in connection with appearance as a witness or other participation in a Proceeding at a time when the Company Indemnified Party is not a named defendant or respondent in the Proceeding.[494] This provision is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[495] and was not required to be modified by the Amended Governance Order. The Commission received no comments on this provision, and the Commission is approving Section 12.4 as proposed.

(d) Nonexclusivity of Rights

Article XII, Section 12.5 of the Proposed CT Plan provides that the right to indemnification and the advancement and payment of expenses conferred in Article XII shall not be exclusive of any other right a Company Indemnified Person may have or hereafter acquire.[496] This provision is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[497] and was not required to be modified by the Amended Governance Order. The

493 See 2021 Approval Order, supra note 19, 86 FR at 44204-05.

494 See Article XII, Section 12.4 of the Proposed CT Plan.

495 See 2021 Approval Order, supra note 19, 86 FR at 44205.

496 See Article XII, Section 12.5 of the Proposed CT Plan.

497 See 2021 Approval Order, supra note 19, 86 FR at 44205.

Commission received no comments on Section 12.5, and the Commission is approving this provision as proposed.

14. Miscellaneous Provisions

Article XIII of the Proposed CT Plan sets forth miscellaneous provisions governing the Proposed CT Plan.

(a) Expenses

Section 13.1 of the Proposed CT Plan governs the payment of expenses by the Proposed CT Plan and requires that all such expenses be paid before any allocations may be made to the Members.[498] Section 13.1 further provides that Members will be responsible for reserves for contingent liabilities and that each Member shall be responsible for the costs of any technical enhancements "made at its request and solely for its use," unless another Member subsequently makes use of the enhancement.[499] This provision is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[500] and was not required to be modified by the Amended Governance Order. The Commission received no comments on Section 13.1, and the Commission is approving Section 13.1 of the Proposed CT Plan as proposed.

(b) Entire Agreement

Section 13.2 provides that the Proposed CT Plan will supersede the existing Equity Data Plans and all other prior agreements with respect to consolidated equity market data. The provision is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[501] and was not required to be modified by the Amended Governance Order. The

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498 See Article XIII, Section 13.1 of the Proposed CT Plan.

499 See id.

500 See 2021 Approval Order, supra note 19, 86 FR at 44205.

501 See id.

Commission received no comments on Section 13.2, and the Commission is approving Section 13.2 of the Proposed CT Plan as proposed.

(c) Notices and Addresses

Section 13.3 of the Proposed CT Plan provides that all communications must be written and sets forth the permissible methods of delivery.[502] This provision is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[503] and was not required to be modified by the Amended Governance Order. The Commission received no comments on Section 13.3, and Commission is approving Section 13.3 of the Proposed CT Plan as proposed.

(d) Governing Law

Section 13.4 of the Proposed CT Plan provides that Delaware law will be the governing law for the Proposed CT Plan. Specifically, the Proposed CT Plan states that the Agreement will be "governed by and construed in accordance with the Delaware Act and internal laws and decisions of the State of Delaware, without regard to the conflicts of laws principles thereof" but will also be subject to "any applicable provisions of the Exchange Act and any rules and regulations promulgated thereunder."[504]

Section 13.4 of the Proposed CT Plan is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[505] and was not required to be modified by the Amended Governance Order. The Commission received no comments addressing Section 13.4, and the Commission is approving Section 13.4 of the Proposed CT Plan as proposed.

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502 See Article XIII, Section 13.3 of the Proposed CT Plan. As proposed, Section 13.3 also states the effective dates for communications under this section. See id.

503 See 2021 Approval Order, supra note 19, 86 FR at 44206.

504 See Article XIII, Section 13.4 of the Proposed CT Plan.

505 See 2021 Approval Order, supra note 19, 86 FR at 44206.

(e) Amendments

Section 13.5 of the Proposed CT Plan governs amendments to the Proposed CT Plan. Paragraph (a) of Section 13.5 states that the Proposed CT Plan may be modified when authorized by the Operating Committee pursuant to Section 4.3, subject to the requirements of section 11A of the Exchange Act and Rule 608 of Regulation NMS.

Paragraph (b) of Section 13.5 sets forth the process for Ministerial Amendments, in which the Chair of the Operating Committee may modify the Proposed CT Plan by filing an amendment with the Commission unilaterally, so long as the required 48-hours advance written notice is provided to the Operating Committee. Paragraph (c) of Section 13.5 defines the term, "Ministerial Amendment" to include, among other things, an amendment to the Proposed CT Plan pertaining to "incorporating a change (A) that a Governmental Authority requires relating to the governance or operation of an LLC, (B) that requires conforming language to the text of this Agreement, and (C) whose conforming language to the text of this Agreement has been approved by the affirmative vote of the Operating Committee pursuant to Section 4.3 or upon approval by a majority of Members pursuant to Section 13.5(b), as applicable."[506]

The Commission is modifying paragraph (v) of Section 13.5(c) to delete the language that reads, "or upon approval by a majority of the Members pursuant to Section 13.5(b), as applicable."[507] This modification is appropriate because the language is textually unclear. Moreover, the Commission's modification is appropriate to conform this provision with Section 4.3 of the Proposed CT Plan governing action by the Operating Committee, which provides for

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506 See Article XIII, Section 13.5(c)(v) of the Proposed CT Plan (emphasis added).

507 See id. In the 2021 Approval Order, the Commission modified renumbered paragraph (v) of Section 13.5(c) of the plan to delete substantively similar language. See 2021 Approval Order, supra note 19, 86 FR at 44206.

voting by SRO group or Non-Affiliated SRO, rather than by the "Members" of the Plan (which would be each of the individual SROs), as proposed.[508] And this would be the case whether the action in question requires the affirmative vote of two-thirds, or a simple majority of the votes allocated to the Operating Committee.[509] As modified, Section 13.5 of the Proposed CT Plan is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[510] and was not required to be modified by the Amended Governance Order. The Commission received no comments on this provision, and the Commission is approving Section 13.5 of the Proposed CT Plan as modified.

(f) Successors

Section 13.6 of the Proposed CT Plan provides that the Proposed CT Plan shall bind and inure "to the benefit of the Members and their respective legal representatives and successors."[511] The provision is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[512] and was not required to be modified by the Amended Governance Order. The Commission received no comments on Section 13.6, and the Commission is approving the provision as proposed.

(g) Limitation on Rights of Others

Section 13.7 of the Proposed CT Plan provides that the Proposed CT Plan shall not be for the benefit of or enforceable by any creditor of the Proposed CT Plan and shall not create any

508 See Article XIII, Section 13.5(c)(v) of the Proposed CT Plan.

509 See Article IV, Section 4.3 of the Proposed CT Plan.

510 See 2021 Approval Order, supra note 19, 86 FR at 44206.

511 See Article XIII, Section 13.6 of the Proposed CT Plan.

512 See 2021 Approval Order, supra note 19, 86 FR at 44206.

legal rights, remedies, or claims.[513] The provision is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[514] and was not required to be modified by the Amended Governance Order. The Commission received no comments on Section 13.7, and the Commission is approving the provision as proposed.

(h) Counterparts

Article XIII, Section 13.8 of the Proposed CT Plan provides that the Members to the Proposed CT Plan may execute the Proposed CT Plan individually in "any number of counterparts," no one of which need contain the signature of all Members.[515] Section 13.8 further provides that, as many counterparts as shall together contain all such signatures shall constitute one and the same instrument.[516]

Section 13.8 is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[517] and was not required to be modified by the Amended Governance Order. The Commission received no comments on Section 13.8, and the Commission is approving the provision as proposed.

(i) Headings

Section 13.9 of the Proposed CT Plan provides that CT Plan headings are for "reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of any provisions of this Agreement."[518] The provision is identical to the

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513 See Article XIII, Section 13.7 of the Proposed CT Plan. Section 13.7 further provides that "except as provided in Section 3.7(b), the Members shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement." See id.

514 See 2021 Approval Order, supra note 19, 86 FR at 44206.

515 See Article XIII, Section 13.8 of the Proposed CT Plan.

516 See id.

517 See 2021 Approval Order, supra note 19, 86 FR at 44207.

518 See Article XIII, Section 13.9 of the Proposed CT Plan.

corresponding provision in the 2021 CT Plan approved by the Commission,[519] and was not required to be modified by Amended Governance Order. The Commission received no comments on Section 13.9, and the Commission is approving the provision as proposed.

(j) Validity and Severability

Section 13.10 of the Proposed CT Plan provides that any determination that any provision of the Proposed CT Plan is invalid or unenforceable shall not affect the validity or enforceability of any other provisions of the Proposed CT Plan, all of which shall remain in full force and effect.[520] Section 13.10 is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[521] and was not required to be modified by the Amended Governance Order. The Commission received no comments on Section 13.10, and the Commission is approving the provision as proposed.

(k) Statutory References

Article XIII, Section 13.11 of the Proposed CT Plan provides that the references in the Proposed CT Plan to a particular statute or regulation, or a provision thereof, "shall be deemed to refer to such statute or regulation, or provision thereof, or to any similar or superseding statute or regulation, or provision thereof, as is from time to time in effect."[522] Section 13.11 is identical to the corresponding provision in the 2021 CT Plan approved by the Commission,[523] and was not required to be modified by the Amended Governance Order. The Commission received no comments on Section 13.11, and the Commission is approving the provision as proposed.

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519 See 2021 Approval Order, supra note 19, 86 FR at 44207.

520 See Article XIII, Section 13.10 of the Proposed CT Plan.

521 See 2021 Approval Order, supra note 19, 86 FR at 44207.

522 See Article XIII, Section 13.11 of the Proposed CT Plan.

523 See 2021 Approval Order, supra note 19, 86 FR at 44207.

(l) Modifications To Be in Writing

Article XIII, Section 13.12 of the Proposed CT Plan provides that the Proposed CT Plan constitutes the entire understanding of its parties, and that any amendment, modification, or alteration of the Proposed CT Plan must in writing and must be adopted in accordance with the provisions of Section 13.5.[524] Section 13.12 is identical to the corresponding provision in the 2021 CT Plan approved by the Commission[525] and was not required to be modified by the Amended Governance Order. The Commission received no comments on Section 13.12, and the Commission is approving the provision as proposed.

15. Implementation

Article XIV of the Proposed CT Plan governs the proposed schedule for implementation of the Proposed CT Plan.

(a) Implementation Timeline

Section 14.1 provides that the steps to implement the Proposed CT Plan, and the timelines for completing these various steps, are set forth in Exhibit F.[526] The proposed timelines would begin when the Proposed CT Plan is approved by the Commission and that approval is published on the Commission's website.[527] Section 14.1 further provides (1) that the steps to implement the plan have been organized into multiple workstreams, some of which can be performed in parallel, and others which have dependencies that need to be completed before they can begin, and (2) that, in Exhibit F to the Proposed CT Plan, the Company has identified such dependencies, some of which are outside the control of the Operating Committee.[528]

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524 See Article XIII, Section 13.12 of the Proposed CT Plan.

525 See 2021 Approval Order, supra note 19, 86 FR at 44207.

526 See Article XIV, Section 14.1 of the Proposed CT Plan.

527 See id.

528 See id.

Furthermore, as proposed, Section 14.1 provides that, in the event a workstream listed in Exhibit F takes shorter or, due to factors outside the Operating Committee's reasonable control, takes longer than expected, the timelines for contingent steps will be adjusted accordingly to account for such change.[529] As proposed in this section, any lengthening of the timeline would require the affirmative vote of the Operating Committee, and must be based on a reasonable determination that the timeline needs to be extended.[530] Finally, as proposed, this section provides that, in such instances, the Operating Committee would be required to include any adjustment in its written progress report to the Commission in accordance with Section 14.2 of the Proposed CT Plan.

In the OIP, the Commission sought comment on the proposed implementation timeline, including, among other things, (1) whether any elements of the proposed timeline should be shortened to ensure that implementation of the Proposed CT Plan can be achieved within a reasonable time, (2) whether the proposed implementation schedule's dependencies—the steps that need to be completed before other steps can begin—are justified or otherwise reasonable, and (3) whether certain dependencies could be removed or modified to accelerate implementation of the Proposed CT Plan.[531] Finally, the Commission sought comment on (1) whether the Commission should modify the Proposed CT Plan to allow the Operating Committee to appoint one or more of the current Equity Data Plan administrators to serve as interim Administrator for the Proposed CT Plan pending the selection and onboarding of a permanent independent Administrator that meets the Amended Governance Order's requirements for the independent plan Administrator, (2) the advantages or disadvantages

529 See id.

530 See id.

531 See OIP, supra note 6, 89 FR at 33413.

associated with appointing such an interim Administrator, (3) how an interim Administrator might affect the implementation schedule for the Proposed CT Plan, and (4) whether, and, if so, how, the implementation schedule should be modified, were the Commission to modify the Proposed CT Plan to permit the appointment of such an interim Administrator.[532]

One commenter states that the Commission should consider measures to address unwarranted delays because the proposed timeline could be lengthened by a vote of the Operating Committee.[533] Another commenter states that the provision allowing the Operating Committee to extend the proposed timeline is a potential source of delay and an aspect of the Proposed CT Plan that "leaves much to be desired."[534] This commenter states that the Commission should take all necessary steps to ensure that the Proposed CT Plan is implemented as expeditiously as possible.[535]

The Commission agrees that it is not appropriate for the Operating Committee of the Proposed CT Plan to be able to unilaterally modify the timeline for implementation by the affirmative vote of the Operating Committee, without being required to file a proposed amendment with the Commission. Such a provision could permit the implementation deadlines to be delayed indefinitely without a clear mechanism for enforcement of the implementation schedule. Accordingly, it is appropriate to modify the Proposed CT Plan to remove from proposed Section 14.1 of the Proposed CT Plan the ability of the Operating Committee to unilaterally extend the implementation timeline.[536] The removal of this provision, however,

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532 See id.

533 See ICI Letter, supra note 109, at 3-4.

534 MEMX Letter, supra note 109, at 5-7.

535 See id.

536 See Article XIV, Section 14.1 of the Proposed CT Plan (as approved).

would still permit the Operating Committee to file an amendment to the Plan with the Commission pursuant to Rule 608 of Regulation NMS or to otherwise seek exemptive relief from the Commission to extend any of the implementation deadlines.

Additionally, as discussed below, the Commission is substantially simplifying the implementation schedule by setting deadlines for the most significant milestones, rather than for each step of the implementation schedule, thereby reducing the likelihood that the SROs would not be able to comply with the implementation schedule in the event of delays in the completion of any of the over 30 discrete activities that were set forth in the Proposed CT Plan's implementation schedule. This modification is appropriate because it balances the need to provide a mechanism for adjusting the established implementation deadlines in the event of delay with the important goal of facilitating the timely implementation of the Proposed CT Plan, which is "critical to reducing existing redundancies, inefficiencies, and inconsistencies in the current Equity Data Plans and to modernizing plan governance."[537]

One commenter supports laying out a detailed transition plan as proposed, and offers two suggestions for improving the proposed transition schedule.[538] First, this commenter supports progressing Workstream 2 (establishing fees, policies, and data subscriber agreements) in parallel with selecting and negotiating the contract with the independent administrator (Workstreams 3 and 4).[539] Second, the commenter states that Workstreams 5.3, 5.5, 5.6, and 5.7 (concerning customers transition from the legacy plans to the Proposed CT Plan) could be completed in fewer than the proposed ten months, and in as little as six months.[540] One

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537 See 2021 Approval Order, supra note 19, 86 FR 44145-46 (citing Governance Order, supra note 11, 85 FR at 28703-05, 28711).

538 See dataBP Letter, supra note 392, at 3-4.

539 See id.

540 See id.

commenter states that all items in Workstream 2 (establishing fees, polices, data subscriber agreements) should not have to be completed as a condition to beginning work on Workstream 5 (independent administrator commences operations).[541]

One commenter states that the proposed 30-month implementation period is too long,[542] and that the Commission should not "wait for all reforms to be ready before any could be implemented."[543] This commenter states that merely setting an earlier deadline or reducing the timeframe for completing workstreams, however, would be insufficient given the potential sources of delay described by the SROs.[544] According to the commenter, making the Operative Date contingent on the completion of all workstreams in Exhibit F, as proposed, would incentivize the three SRO groups to create gridlock in the voting process and remain responsible for the dissemination of consolidated market data through the current Equity Data Plans.[545] This commenter states that because "the selection and onboarding of the independent Administrator is responsible for the lion's share of the 30-month implementation period," the Commission should amend the Proposed CT Plan "to allow the Operating Committee to select one of the two current Administrators of the Equity Data Plans as interim Administrator until such time as the Operating Committee selects and onboards a new Administrator that meets the Plans requirements for independence."[546] This amendment, the commenter states, "would allow the Plan to become operative while the Operating Committee works towards full implementation of

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541 See id.

542 See MEMX Letter, supra note 109, at 6.

543 See id. at 6, 9.

544 See id. at 6.

545 See id. at 9-10.

546 Id. at 7-8.

all required Plan elements."[547] Another commenter states that making the Service Level Agreement ("SLA") terms part of the selection process could reduce the time for contract negotiations with the new Administrator from 4 months to 2 months.[548]

The Commission recognizes the challenges associated with completing the actions required for implementation of the Proposed CT Plan and the complexity of the endeavor, as illustrated by Exhibit F to the Proposed CT Plan. And while setting enforceable deadlines for the implementation of the Proposed CT Plan is necessary for the timely achievement of the Operative Date, setting enforceable deadlines for each of the 30 individual tasks specified in Exhibit F is impracticable because the failure of the Operating Committee to meet the deadline for any of those tasks—whether or not the specific deadline was critical to the timely implementation of the Proposed CT Plan—would require the Operating Committee either to file a proposed amendment with the Commission to modify the implementation schedule or to seek exemptive relief from the Commission. Instead, the detailed project-management information outlined in Exhibit F would be appropriate for, and should be included in, the written progress reports required by Section 14.2 of the Proposed CT Plan, because including such detail in the written progress reports would provide transparency to the Commission and to market participants about the progress of implementation without requiring that any delay in the completion of a subtask creates the need for a proposed plan amendment or a request for exemptive relief from the Commission.

Accordingly, the Commission is not adopting the commenters' suggestions with respect to modifying or otherwise reconfiguring the workstreams proposed in Exhibit F. Instead, the

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547 Id. at 9.

548 See SIFMA Letter, supra note 109, at 3.

Commission is deleting Exhibit F in its entirety and is replacing the text of Section 14.1 with a series of fixed deadlines for high-level milestones along the implementation timelines. The Commission recognizes that the SROs have extensive experience in operating the existing Equity Data Plans, and that they can draw on that experience to develop internal workstreams reasonably suited to help ensure the timely completion of the specific actions needed to implement the Proposed CT Plan within the deadlines specified in Section 14.1 as modified and approved by the Commission. The modification is appropriate because it strikes a balance between helping to ensure that implementation proceeds in a timely manner while providing for flexibility in the scheduling of individual implementation tasks.

Accordingly, having considered the implementation schedule in Section 14.1 and Exhibit F of the Proposed CT Plan, the Commission is replacing Section 14.1 of the Proposed CT Plan as proposed with a series of deadlines for specific milestones in the implementation of the Proposed CT Plan.

First, new paragraph 14.1(a) provides that, no later than one month after the Effective Date, the Voting Representatives shall be determined pursuant to Section 4.2 of the Proposed CT Plan.[549] This timeframe is the same as proposed by the SROs in Exhibit F, Workstream 1, and therefore does not represent, in and of itself, a substantive modification of the Proposed CT Plan as proposed.[550] Moreover, the SROs, who have already selected their representatives to the operating committees of the existing Equity Data Plans, and who have extensive experience in doing so, should be able to select their Voting Representatives to the Operating Committee within the timeframe provided.

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549 See Article XIV, Section 14.1(b) of the Proposed CT Plan (as approved).

550 See Exhibit F to the Proposed CT Plan (as proposed).

Second, new paragraph 14.1(b) provides that, that no later than three months after the Effective Date, the Voting Representatives shall select the members of the Advisory Committee.[551] This three month timeframe is the same as proposed by the SROs in Exhibit F, Workstream 1.[552] Moreover, the SROs have extensive experience in selecting members of the advisory committee of the Equity Data Plans such that they should be able to finalize all actions to select members of the Advisory Committee within the timeframe provided.[553]

Third, new paragraph 14.1(c) provides that, no later than 12 months after the Effective Date, the Operating Committee shall file with the Commission proposed Fees charged to Vendors and Subscribers for Transaction Reports and Quotation Information in Eligible Securities.[554] This 12-month timeframe is the same as proposed by the SROs in Exhibit F, Workstream 1.[555] Moreover, given the importance of market data fees to both SROs and other market participants, the determination of Proposed CT Plan fees will be a critical priority for both SROs and members of the Advisory Committee. As stated in the 2021 Approval Order, "[a]ssessing fees to subscribers for access to the SIP data is one of the fundamental responsibilities of the Operating Committee and one of the issues most consequential to both SROs and other market participants."[556] Additionally, through its extensive experience overseeing the Equity Data Plans and the national market system, the Commission has observed that the SROs have detailed and substantial pre-existing knowledge and experience with the

551 See Article XIV, Section 14.1(c) of the Proposed CT Plan (as approved).

552 See Exhibit F to the Proposed CT Plan; Notice, supra note 4, 89 FR at 5026-29.

553 See, e.g., Section III(e)(ii) of the CTA Plan; Section IV.E.(b) of the UTP Plan.

554 See Article XIV, Section 14.1(d) of the Proposed CT Plan (as approved).

555 See Exhibit F to the Proposed CT Plan; Notice, supra note 4, 89 FR at 5026-29.

556 2021 Approval Order, supra note 19, 86 FR at 44148.

content and pricing of the equity data products that are disseminated under the current centralized SIP model.

The Commission received several comments addressing the substance of the fee amendment required to be filed by the Proposed CT Plan.[557] One commenter states that the Commission should ensure that the fees proposed for the Proposed CT Plan are fair and reasonable.[558] This commenter states that the Commission should encourage the Proposed CT Plan to evaluate new or alternative fee models for consolidated equity market data.[559] According to this commenter, data costs are currently charged to retail customers on a per investor basis (based on whether they are acting in a non-professional or professional capacity) and to broker-dealers via a myriad of additional fees (e.g., display fees, non-display fees, access fees, etc.) for use of this exact same data.[560] The commenter states that this "complex and often opaque pricing model is completely inconsistent with the cost to the SROs to produce the data (which does not scale on a per investor basis) and is highly biased towards the retail investor."[561]

The Commission received comments expressing concern about the fees required to be proposed for the Proposed CT Plan, as well as suggesting that the Commission clarify regulatory standards or encourage alternative models for such fee-related filings in the Proposed CT Plan.[562] With respect to the development of fees for equity market data to be disseminated by the Proposed CT Plan more broadly, Article IV, Section 4.1 of the Proposed CT Plan charges the

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557 See Workstream 2 ("New Fees, Policies, and Data Subscriber Agreements") of proposed Exhibit F to the Proposed CT Plan.

558 See Fidelity Letter, supra note 80, at 4-5.

559 See id.

560 See id.

561 Id.

562 See id.; Polygon Letter, supra note 82, at 1.

Operating Committee with "developing fair and reasonable fees for equity market data," as well as with "assessing the marketplace for equity data products and ensuring that CT Plan feeds are priced in a manner that is fair and reasonable, and designed to ensure the widespread availability of CT Feeds data to investors and market participants."[563] And fees for data under the Proposed CT Plan will be established at a later date as proposed amendments, and any such fees will be assessed against the statutory and regulatory standards that apply to fees proposed by the effective national market system plan(s), including Sections 11A(c)(1)(D) of the Exchange Act[564] and Rule 603(a) under Regulation NMS.[565] The proposed fees must be fair and reasonable.[566] They must also be filed with the Commission pursuant to Rule 608[567] and would be published for public comment and thereafter must be approved by the Commission before becoming effective. Therefore, the requirement that fees be fair and reasonable need not be restated or otherwise clarified in the Proposed CT Plan.

Fourth, new paragraph Section 14.1(d) would require that, no later than 30 months after the Effective Date, or no later than 90 days after the Commission has approved Fees charged to Vendors and Subscribers for Transaction Reports and Quotation Information in Eligible Securities, whichever date is later, the Proposed CT Plan shall conduct the Processor and Administrator functions related to the public dissemination of real-time consolidated Transaction Reports and Quotation Information for Eligible Securities. The 30-month timeframe is the same as proposed by the SROs in Exhibit F, Workstream 1,[568] and the text of this new paragraph

563 See Article IV, Section 4.1(a)(iii) and (a)(v) of the Proposed CT Plan (as approved).

564 15 U.S.C. 78k-1(c)(1)(D).

565 17 CFR 242.603(a).

566 17 CFR 242.603(a)(1).

567 17 CFR 242.608.

568 See Exhibit F to the Proposed CT Plan; Notice, supra note 4, 89 FR at 5026-29.

further recognizes that approval of fees by the Commission is a necessary step toward implementation of the Proposed CT Plan. Providing a minimum of 90 days after Commission approval of the required fees is appropriate because the provision could not serve to shorten the 30-month provision for implementing the other aspects of the Proposed CT Plan and because, once implementation of those other aspects is complete, 90 days' notice should be sufficient notice to market participants of the upcoming change in the dissemination of consolidated market data. Additionally, the Commission is modifying the Proposed CT Plan to permit the Operating Committee to appoint one or more of the current Equity Data Plan administrators to serve as Interim Administrator(s) pending the selection and onboarding of the Administrator, which, because the selection process for the Administrator would take 26 of the 30-months in total required for the Proposed CT Plan to become operative, should reduce the likelihood that the process to select and onboard the independent Administrator would delay the Operative Date.

Fifth, new paragraph 14.1(e) would provide that, no later than 30 months after the Effective Date, the Administrator of the Proposed CT Plan, consistent with the provisions of Section 6.2 and Section 6.4 of the Proposed CT Plan, shall be selected. This modification, in conjunction with the modification to the Proposed CT Plan to add new Section 6.5 (Interim Administrator(s)), is appropriate to facilitate the full and timely implementation of the Proposed CT Plan by permitting crucial reforms to the governance of the NMS plans for consolidated equity market data without delaying the process until the lengthiest implementation component can be completed.

Several commenters support close Commission oversight of the Proposed CT Plan implementation process.[569] One commenter states that, consistent with Rule 608, the Commission needs to have strong oversight over the implementation process for the Proposed CT Plan because the SROs have resisted changes to the Equity Data Plans, and the Proposed CT Plan does not include financial penalties if the SROs' implementation of the Proposed CT Plan does not proceed as anticipated.[570] Another commenter states that the Commission should assert "special oversight" over the process, and urges the Commission to hold member SROs more accountable.[571] Another commenter states that the Commission should focus on robust oversight of the Operating Committee to ensure that the Proposed CT Plan is implemented as expeditiously as possible.

With respect to the comment suggesting that the Commission should exercise special or strong oversight over the Proposed CT Plan's implementation process, as well as the comment stating that the Proposed CT Plan does not provide for financial penalties in the event implementation of the plan does not proceed as anticipated, the modifications discussed above enhance the Commission's oversight over the implementation process by removing the ability of the Operating Committee to unilaterally extend the implementation timeline and by providing enforceable deadlines for the achievement of key milestones in the process. Additionally, the written progress reports required by Section 14.2 of the Proposed CT Plan will assist with the Commission's oversight of the plan and its requirements, including oversight of the progress made toward completing each of the steps required to implement the Proposed CT Plan. The

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569 See Fidelity Letter, supra note 80, at 4; ICI Letter, supra note 109, at 3-4; Polygon Letter, supra note 82, at 2; SIFMA Letter, supra note 109, at 4; MEMX Letter, supra note 109, at 7.

570 See Fidelity Letter, supra note 80, at 3-4.

571 Polygon Letter, supra note 82, at 2.

written reports will also be available to the Equity Data Plans' websites, which should provide sufficient transparency and accountability with respect to implementation progress of the Proposed CT Plan.

For the foregoing reasons, the Commission is approving Section 14.1 of the Proposed CT Plan as modified.

(b) Written Progress Reports

Section 14.2 of the Proposed CT Plan sets forth requirements for certain written reports to the Commission.[572] Specifically, Section 14.2(a) provides that beginning three months after the formation of the Operating Committee and continuing every three months until the Operative Date, the Operating Committee will provide written progress reports to the Commission.[573] Section 14.2(b) provides that such written progress reports will contain the actions undertaken to date by the Operating Committee and a detailed description of the progress made toward completing each of the steps listed in Exhibit F to the Proposed CT Plan.[574] Finally, this section requires that the Operating Committee make such progress reports available on the CQ Plan and CTA Plan's and UTP Plan's websites, and on the Proposed CT Plan's website, when available after the selection of the Administrator.[575]

One commenter supports the requirement that the Proposed CT Plan Operating Committee provide written progress reports to the Commission every three months, beginning from the formation of the Operating Committee until the Operative Date.[576] This commenter also

572 See Article XIV, Section 14.2 of the Proposed CT Plan.

573 See Article XIV, Section 14.2(a) of the Proposed CT Plan.

574 See Notice, supra note 4, 89 FR at 5027-29 (Exhibit F of the Proposed CT Plan).

575 See Article XIV, Section 14.2(b) of the Proposed CT Plan.

576 See Fidelity Letter, supra note 80, at 4.

supports the requirement to publish the required progress reports on plan websites, including those of the Equity Data Plans.[577] Another commenter suggests making clear that progress reports provided to the Commission under this section are also required to be made publicly available at the same time as reports are provided to the Commission.[578] One commenter states that the Commission should closely monitor the Operating Committee's progress, including carefully reviewing the public written progress reports that must be submitted to the Commission.[579] Another commenter supports greater transparency during implementation of the Proposed CT Plan.[580] One commenter states that Section 14.2 should be revised to clarify that posting of progress reports on the Equity Data Plans' websites must occur prior to the selection of the independent administrator, rather than after a new administrator is selected, as proposed, so as to avoid unnecessary delay and ensure that this provision is consistent with the Amended Governance Order.[581]

The Commission agrees that ensuring transparency with respect to the progress made to implement the Proposed CT Plan will be helpful to market participants because such reports provide market participants visibility into the actions undertaken and the progress made toward completing each of the actions required for implementation of the Proposed CT Plan.[582] For the reasons set out in the 2021 Approval Order, the required frequency of the progress reports, one

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577 See id.

578 See SIFMA Letter, supra note 109, at 3.

579 See ICI Letter, supra note 109, at 3-4.

580 See Polygon Letter, supra note 82, at 2.

581 See ICI Letter, supra note 109, at 3, n.12.

582 See 2021 Approval Order, supra note 19, 86 FR at 44149 ("The requirement to provide progress reports in writing to the Commission on a quarterly basis and to make them publicly available is designed to help ensure that affected market participants are informed about the status of the steps that are taken to implement the CT Plan within the prescribed time periods. Providing periodic updates to the Commission should also facilitate holding the Operating Committee accountable for its progress in completing the interim steps towards satisfying the longer-range requirements.").

report every three months, should be sufficient to identify for the Commission any significant delays in implementation without imposing unnecessary burdens on efforts to implement the Proposed CT Plan.[583]

The Commission agrees with commenters, however, that Section 14.2 should be clearer with respect to requirements governing the publication of progress reports.[584] The Commission is therefore modifying Section 14.2 to clarify that publication of the required progress reports must be promptly made on the CTA Plan, the CQ Plan, and the UTP Plan websites "until such time as the Plan's website becomes available." This modification is appropriate to provide greater clarity with respect to requirements for publication of the required progress reports, including those concerning their timing. Requiring that such progress reports be made promptly available to the public on plan websites, as modified, is appropriate to help ensure that affected market participants are timely informed regarding the filing of such reports.

The Commission agrees that close monitoring of progress towards the implementation of the Proposed CT Plan will be important.[585] The requirement to provide progress reports in writing to the Commission on a quarterly basis and to make them publicly available is designed to not only help ensure that affected market participants are informed about the status of the steps that are taken to implement the Proposed CT Plan within the prescribed time periods, but also to provide the Commission with periodic updates, which should facilitate holding the Operating Committee accountable for its progress in completing the interim steps towards satisfying the

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583 See id. ("The Commission believes that this requirement should not be overly burdensome to the Operating Committee or distract from its performance of the specified actions required by the CT Plan, because the quarterly reports would essentially reflect the analysis the Operating Committee would need to undertake in any event for its diligent oversight of the implementation process.").

584 See ICI Letter, supra note 109, at 3, n.12.

585 See id. at 3-4.

longer-range requirements. As discussed above, the required frequency of the progress reports should be sufficient to identify for the Commission any significant delays in implementation without imposing unnecessary burdens on efforts to implement the Proposed CT Plan.[586] Thus, the required quarterly progress reports and the involvement of the Operating Committee, as well as of members of the Advisory Committee, should be sufficient to help ensure timely implementation of the Proposed CT Plan.

Finally, the Commission is modifying Section 14.2(b) to replace the phrase "steps listed in Exhibit F" with the phrase "steps required to implement the Plan." This modification is appropriate to conform Section 14.2(b) with Commission modifications to Section XIV of the Proposed CT Plan governing its implementation.

For the foregoing reasons, the Commission is approving Section 14.2 as modified.

(c) Transition from CQ Plan, CTA Plan, and UTP Plan

Article XIV, Section 14.3 of the Proposed CT Plan addresses the transition from the current Equity Data Plans to the Proposed CT Plan. Section 14.3(a) provides that until the Operative Date, the Members will continue to operate pursuant to the CQ Plan, CTA Plan, and UTP Plan with respect to the public dissemination of real-time consolidated equity market data for Eligible Securities rather than the Proposed CT Plan.[587] And Section 14.3(b) provides that, as of the Operative Date, the Members shall conduct, through the Company, the Processor and Administrator functions related to the public dissemination of real-time consolidated equity market data for Eligible Securities required by the Commission to be performed by the Members

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586 See 2021 Approval Order, supra note 19, 86 FR at 44149 ("The Commission believes that this requirement should not be overly burdensome to the Operating Committee or distract from its performance of the specified actions required by the CT Plan, because the quarterly reports would essentially reflect the analysis the Operating Committee would need to undertake in any event for its diligent oversight of the implementation process.").

587 See Article XIV, Section 14.3(a) of the Proposed CT Plan.

under the Exchange Act.[588] Finally, paragraph (b) of Section 14.3 further provides that the Members must file an amendment to the CQ Plan, CTA Plan, and UTP Plan to cease their operation as of the Operative Date.[589]

Section 14.3 is substantively similar to the corresponding provisions of the 2021 CT Plan approved by the Commission,[590] with the exception of the added requirement that, as of the Operative Date, the Members shall file an amendment to the CQ Plan, the CTA Plan, and the UTP Plan to cease those plans' operations. This addition is appropriate as it clarifies the steps to be taken to complete the transition from the existing Equity Data Plans to the Proposed CT Plan. The Commission is also modifying the text of paragraph 14.3(b) to add the words "and the rules and regulations thereunder" to the end of the phrase regarding the functions "required by the Commission to be performed by the Members under the Exchange Act." This modification is appropriate because the SROs are also subject to certain requirements with respect to NMS plans, including the Proposed CT Plan under the rules and regulations adopted by the Commission under the Exchange Act. The Commission received no comments addressing Section 14.3, and the Commission is approving Section 14.3 of the Proposed CT Plan as modified.

(d) Implementation of the MDI Rules

Rule 614(e)(1) of the MDI Rules directed the participants of the effective national market system plan(s) for NMS stocks to file an amendment pursuant to Rule 608 of Regulation NMS to conform the effective national market system plan(s) for NMS stocks to reflect the provision of information with respect to quotations for and transactions in NMS stocks that is necessary to

588 See Article XIV, Section 14.3(b) of the Proposed CT Plan.

589 See id.

590 See 2021 Approval Order, supra note 19, 86 FR at 44140.

generate consolidated market data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators.[591] The MDI Rules also required that the amendment to the effective national market system plan(s) required under Rule 614(e)(1) "must include the fees proposed by the plan(s) for data underlying consolidated market data."[592]

On November 5, 2021, the SROs filed separate amendments of the Equity Data Plans pursuant to these requirements, and the Commission on September 22, 2022, disapproved the proposed amendments, finding, in the case of the amendments relating to the expanded definition of "core data" and the introduction of competing consolidators, that the amendments did not conform the Equity Data Plans to 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 SROs to competing consolidators and self-aggregators,[593] and, in the case of the associated fee amendments, that the amendments did not demonstrate that the proposed fees were fair, reasonable, and not unreasonably discriminatory.[594]

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591 17 CFR 242.614(e)(1); see also MDI Rules Release, supra note 461, 86 FR at 18699.

592 MDI Rules Release, supra note 461, 86 FR at 18699.

593 See Consolidated Tape Association; Order Disapproving the Thirty-Seventh Substantive Amendment to the Second Restatement of the CTA Plan and the Twenty-Eighth Substantive Amendment to the Restated CQ Plan, Securities Exchange Act Release No. 95850 (Sept. 21, 2022), 87 FR 58560 (Sept. 27, 2022) (File No. SR-CTA/CQ-2021-02); Joint Industry Plan; Order Disapproving the Fifty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, Securities Exchange Act Release No. 95848 (Sept. 21, 2022), 87 FR 58544 (Sept. 27, 2022) (File No. S7-24-89).

594 See Consolidated Tape Association; Order Disapproving the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan, Securities Exchange Act Release No. 95851 (Sept. 21, 2022), 87 FR 58613 (Sept. 27, 2022) (File No. SR-CTA/CQ-2021-03); Joint Industry Plan; Order Disapproving the Fifty-Second 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, Securities Exchange Act Release No. 95849 (Sept. 21, 2022), 87 FR 58592 (Sept. 27, 2022) (File No. S7-24-89).

One commenter states that the Proposed CT Plan should be amended to require that the Proposed CT Plan assume responsibility for all core data, as defined in Rule 600(b)(21) of Regulation NMS, and not only the subset of core data that is currently made available by the Equity Data Pans.[595] This commenter states that the "Amended [Governance] Order and the infrastructure rule appear to require that the Plan include provisions that are consistent with the revised definition of 'core data' in Rule 600(b)(21) of Regulation NMS,"[596] which would include data elements in addition to transaction reports and quotation information.[597] This commenter further states that, "by contrast, Section 4.1 of the [Proposed CT] Plan replaces the broad reference to 'core data' in the Amended [Governance] Order with a significantly narrower reference" to the Operating Committee's responsibilities with respect to Transaction Reports and Quotation Information in Eligible Security, which does not include all elements of "core data" as defined in Rule 600(b)(21) and is "flatly inconsistent with the Amended Order and the infrastructure rule."[598]

One commenter states that the Commission should clarify in this order its expectations with respect to establishing a credible plan for implementing the MDI Rules.[599] Another commenter states that the Commission should require the SROs in the Proposed CT Plan to address other non-fee aspects prescribed in the MDI Rules, as this would address the current uncertainty as to when the current Operating Committee will submit revised proposals for the Commission's approval.[600]

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595 See MEMX Letter, supra note 109, at 15-20.

596 Id. at 16-17 (emphasis in original).

597 See id. at 17.

598 Id.

599 See SIFMA Letter, supra note 109, at 3-4.

600 See ICI Letter, supra note 109, at 4.

Several commenters suggest that the Commission address, whether in the Proposed CT Plan or in the order approving it, the fee proposals to be filed with the Commission under the MDI Rules.[601] One commenter states that the Commission should require the SROs to act on the fees for data to be provided under the MDI Rules because, without approval of such fee filing, a competitive market for consolidated market data cannot begin.[602] One commenter suggests that the Commission clarify, in the order approving the Proposed CT Plan, its expectations with respect to the timing for the SROs to propose fees for enhanced core equity market data to be distributed under the MDI Rules.[603] Another commenter states that the Commission should require the SROs to re-file revised plan amendments setting the fees for the expanded core data elements to address the current uncertainty as to when the current Operating Committee will submit revised proposals.[604]

Another commenter seeks clarification with respect to whether the fees under the Proposed CT Plan would be for the equity market data currently distributed under the Equity Market Data Plans or for the enhanced core data to be distributed under the Commission's MDI Rules.[605]

The Commission recognizes that the full implementation of the revised governance structure of the Proposed CT Plan and of the MDI Rules must be appropriately sequenced and that an important step toward full implementation of these initiatives should be the implementation of the new governance structure of the Proposed CT Plan. The immediate

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601 See Fidelity Letter, supra note 80, at 5-6; SIFMA Letter, supra note 109, at 3-4; ICI Letter, supra note 109, at 4.

602 See Fidelity Letter, supra note 80, at 5-6.

603 See SIFMA Letter, supra note 109, at 3-4.

604 See ICI Letter, supra note 109, at 4.

605 See SIFMA Letter, supra note 109, at 3.

implementation of the MDI Rules through the Proposed CT Plan would be impracticable, because it would require simultaneous implementation of both a new governance structure and the provisions of the MDI Rules, and the immediate implementation of the MDI Rules through the existing Equity Data Plans does not make sense, given that those plans are to be phased out of operation in favor of the Proposed CT Plan. Therefore, the Commission is not modifying the Proposed CT Plan to require the dissemination of "core data" as defined in the MDI Rules.

The SROs, however, remain under the obligation imposed by Rule 614(e) of Regulation NMS to file an amendment "[c]onforming the effective national market system plan(s) for NMS stocks to reflect 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."[606] Although, as described above,[607] the SROs previously filed proposed amendments to the Equity Data Plans under Rule 614(e), the Commission disapproved those proposed amendments, finding that the proposed amendments "do not comply with Rule 614(e)(1) because they do not conform the Plans to 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 SROs to competing consolidators and self-aggregators."[608] Because the previously filed and disapproved amendments were "inconsistent with the MDI Rules, specifically Rule 614(e),"[609] the participants to the effective national market system

606 17 CFR 242.614(e)(1).

607 See supra note 593 and accompanying text.

608 Securities Exchange Act Release No. 95848, supra note 593, 87 FR at 58545; Securities Exchange Act Release No. 95850, supra note 593, 87 FR at 58561.

609 Id.

plan(s) will need to develop and file new proposed amendments pursuant to Rule 608,[610] and—given that the approved CT Plan will, when fully implemented, replace the Equity Data Plans—it is the Commission's expectation that the SROs will file these proposed amendments to the approved CT Plan. The proposed amendments would also need to include the fees proposed for data underlying consolidated market data.[611]

(e) Consideration of Other Actions

One commenter states that the Commission should consider ways of expediting implementation of the MDI Rules, including through the use of exchange proprietary data feeds.[612] Specifically, this commenter states that the Commission (or the SROs on their initiative) could allow market data vendors, who would register with the Commission, to use exchange proprietary market data feeds to generate consolidated market data pursuant to the MDI Rules on a temporary basis until the fee arrangements and related infrastructure for the Proposed CT Plan are finalized. Otherwise, this commenter states that market participants would have to wait over two and a half years before the Commission's MDI Rules are implemented, even though the technical ability to actualize those rules already exists.[613] This commenter

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610 See Regulation NMS Amendments, supra note 159, 89 FR 81625.

611 See MDI Rules Release, supra note 461, 86 FR at 18699 ("The first key milestone [in the implementation of the MDI Rules] will be the amendment to the effective national market system plan(s) required under Rule 614(e), which must include the fees proposed by the plan(s) for data underlying consolidated market data."). On Nov. 5, 2021, the SROs filed proposed fee amendments pursuant to these requirements, but the Commission on Sept. 22, 2022, disapproved the amendments because they did not demonstrate that the proposed fees were fair, reasonable, and not unreasonably discriminatory. See Consolidated Tape Association; Order Disapproving the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan, Securities Exchange Act Release No. 95851 (Sept. 21, 2022), 87 FR 58613 (Sept. 27, 2022) (File No. SR-CTA/CQ-2021-03); Joint Industry Plan; Order Disapproving the Fifty-Second 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, Securities Exchange Act Release No. 95849 (Sept. 21, 2022), 87 FR 58592 (Sept. 27, 2022) (File No. S7-24-89).

612 See Databento Letter, supra note 365, at 3.

613 See id.

further states that a top concern when implementing the Commission's MDI Rules should be addressing certain onboarding paperwork and reporting processes.[614] This commenter states that end users of consolidated market data should be required to contract with the competing consolidator of their choice, rather than with the Plan Administrator.[615] To compensate the SROs for the loss of such downstream fee revenues, the commenter states that it would support a potential revenue sharing agreement, such as one whereby SROs would receive a portion of the competing consolidator's revenue.[616] The commenter further states that that consolidated market data should be sold to competing consolidators free and clear of downstream fees, such as device fees or non-display fees. Otherwise competing consolidators would be reduced to "mere fee collectors" for the plan, with little incentive for operating as such.[617]

One commenter suggests rejecting the Proposed CT Plan and revisiting the MDI Rules.[618] This commenter states that the MDI Rules and the decentralized consolidator model "undermined the latency issue and skewed towards the interests of subscribers and proprietary products" because users of SIPs or competing consolidators have an extra hop latency disadvantage that would affect demand of the new single consolidated tape.[619] The commenter states that due to conflicting interests in connection with the sale of proprietary products, it is not in the exchanges' interest to ensure that the consolidated tape feeds are delivered timely, without latency, and that they have no interest in ensuring that the data sent to the SIP, or eventually

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614 See id. at 2.

615 See id.

616 Id. at 2.

617 Id.

618 See Data Boiler Letter, supra note 208, at 8.

619 Id. at 2-8.

competing consolidator, is published in sync with their proprietary products.[620] According to this commenter, "[w]ithout a secured and synchronized start line," competing consolidators will never be a reasonable compromise, if not a close substitute, to compete with proprietary products.[621] This commenter states that the Commission should facilitate the establishment of the NMS in accordance with and in furtherance of Congress's objectives.[622] To that end, this commenter suggests that the Commission: (1) disapprove the Proposed CT Plan and "ditch regulatory price control through MDIR and/or the CT Plan;" (2) mandate that the availability of market data across SIPs and competing consolidators and proprietary data fees be secured and synchronized in accordance with an atomic clock; (3) require market and data redistributors to maintain a connectivity disparity ratio between the fastest proprietary products and the slowest mass market product (< 2.5 to 4 times) to ensure consolidated market data evolves along with the ecosystem; (4) affirm that data ownership rights belong to content creators; (5) prohibit market centers from offering any proprietary products "that the maximum capacity cannot be concurrently used by at least 20% of all market participants," and require that the offering of proprietary products must be "accompanied by at least one mass market product," such as the SIPs or competing consolidator, that is "available and affordable by 80% of all market participants;" (6) ensure that the hierarchical pricing of proprietary products be in proportion with the performance improvement over mass market products, and that proprietary product pricing be transparent and publicly disclosed; and (7) introduce price gouging rules in times of market volatility.[623]

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620 See id.

621 Id.

622 See id. at 6-8.

623 Data Boiler Letter, supra note 208, at 6-8.

With respect to the comment recommending disapproval of the Proposed CT Plan,[624] the purpose of the Proposed CT Plan is to facilitate the collection and dissemination of core data so that the public has ready access to a comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day. With the modifications approved by the Commission, as set forth in this order, the Proposed CT Plan is reasonably designed to achieve these goals. Therefore, disapproval of the Proposed CT Plan would not ensure the prompt, accurate, reliable, and fair collection processing, distribution, or the publication of information with respect to NMS securities in the public interest.

With respect to comments stating that the Proposed CT Plan seems to perpetuate the status quo of the Equity Data Plans,[625] and as the Commission stated in the Governance Order, addressing issues with the current governance structure of the Equity Data Plans is "an important first step in responding to concerns about the consolidated data feed."[626] The Commission recognizes that the inadequacies in the governance model of the Equity Data Plans that the Proposed CT Plan is designed to address may not be the sole cause of broader concerns about the consolidated feed.[627] As the Commission stated in the Governance Order, however, the governance structure of the Equity Data Plans contributes significantly to the broader concerns about the consolidated data feed.[628] Thus, contrary to the commenter's statements,[629] changing the governance structure through which the SROs oversee the operations of the SIPs, as provided

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624 Id. at 6-8.

625 See Polygon Letter, supra note 82, at 1.

626 Governance Order, supra note 11, 85 FR at 28707 (citing to Securities Exchange Act Release No. 87906 (Jan. 8, 2020), 85 FR 2164, 2173 (Jan. 14, 2020) (File No. 4-757) (emphasis in original; citations omitted)).

627 See Governance Order, supra note 11, 85 FR at 28707.

628 See id.

629 See Polygon Letter, supra note 82, at 1.

under the Proposed CT Plan, is appropriate to create a governance structure that will reduce obstacles to ongoing improvement of the consolidated market data feeds in ways that the current governance structure of the Equity Data Plans has not.[630]

III. CONCLUSION

For the reasons discussed above, the Commission finds that the Proposed CT Plan, as modified, is consistent with the requirements of section 11A of the Exchange Act,[631] and Rule 608 thereunder,[632] that the NMS plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.

IT IS THEREFORE ORDERED that, pursuant to section 11A of the Exchange Act,[633] and the rules and regulations thereunder, the Proposed CT Plan (File No. 4-757), as modified, be and it hereby is approved and declared effective, and the Participants are authorized to act jointly to implement the Proposed CT Plan as approved as a means of facilitating a national market system.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

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630 See Governance Order, supra note 11, 85 FR at 28707.

631 15 U.S.C. 78k-1.

632 17 CFR 242.608.

633 15 U.S.C. 78k-1.

Attachment A

LIMITED LIABILITY COMPANY AGREEMENT

OF

CT PLAN LLC

a Delaware limited liability company

(As modified by the Commission; additions are underlined; deletions are [bracketed].)

(1) This LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") dated as of the [●] day of [●], [●] is made and entered into by and among the parties identified in Exhibit A, as Exhibit A may be amended from time to time (the "Members"), which are the members of CT Plan LLC, a Delaware limited liability company (the "Company"). The Members shall constitute the "members" (as that term is defined in the Delaware Act) of the Company.

RECITALS

(a) On September 1, 2023, the Commission ordered the Members to act jointly in developing and filing with the Commission by October 23, 2023, a proposed new single national market system ("NMS") plan to govern the public dissemination of real-time consolidated equity market data for NMS stocks. See Amended Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Release No. 34-98271 (September 1, 2023), 88 FR 61630 (Sept. 7, 2023) (File No. 4-757) (the "Amended Order"). This Agreement is being filed with the Commission, as directed in the Amended Order.

(b) As the Members have already formed the Company as a limited liability company pursuant to the Delaware Act by filing a certificate of formation (the "Certificate") with the Delaware Secretary of State, this Agreement will become effective on the date (the "Effective Date") when approved by the Commission pursuant to Rule 608 of Regulation NMS as an NMS plan governing the public dissemination of real-time consolidated market data for Eligible Securities (the "Plan").

(c) It is understood and agreed that, in performing their obligations and duties under this Agreement, the Members are performing and discharging functions and responsibilities related to the operation of the national market system for and on behalf of the Members in their capacities as self-regulatory organizations, as required under the Section 11A of the Exchange Act, and pursuant to Rule 603(b) of Regulation NMS thereunder. It is further understood and agreed that this Agreement and the operations of the Company shall be subject to ongoing oversight by the Commission. No provision of this Agreement shall be construed to limit or diminish the obligations and duties of the Members as self-regulatory organizations under the federal securities laws and the regulations thereunder.

Article I.
DEFINITIONS

Section 1.1 Definitions.

As used throughout this Agreement and the Exhibits:

(1) "Administrator" means the Person selected by the Company to perform the administrative functions under Article VI of this Agreement[described in this Agreement pursuant to the Administrative Services Agreement. The Person selected as the Administrator will not be owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own proprietary market data product for NMS stocks].

(2) "Advisory Committee" means the committee formed in accordance with Section 4.7 of this Agreement.

(3) "Affiliate" means, as to any Person, any other Person that, directly or indirectly, Controls, is Controlled by, or is under common Control with such Person. Affiliate or Affiliated, when used as an adjective, shall have a correlative meaning.

[(3)](4) "Agent" means, for purposes of Exhibit C, agents of the Operating Committee, a Member, the Administrator, the Interim Administrator(s), and the Processors, including, but not limited to, attorneys, auditors, advisors, accountants, contractors or subcontractors.

[(4)](5) "Applicable Law" means all applicable provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental Authority; (b) any consents or approvals of any Governmental Authority; and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

[(5)](6) "Best Bid and Offer" has the meaning ascribed to the term "best bid and best offer" by Rule 600(b)(8) of Regulation NMS.

[(6)](7) "Capital Contributions" means any cash, cash equivalents, or other property that a Member contributes to the Company with respect to its Membership Interest.

[(7)](8) "Chair" shall mean the individual elected pursuant to Section 4.4(e).

[(8)](9) "Code" means the Internal Revenue Code of 1986, as amended.

[(9)](10) "Commission" or "SEC" means the U.S. Securities and Exchange Commission.

[(10)](11) "Company Indemnified Party" means a Person, and any other Person of whom such Person is the legal representative, that is or was a Member or a[n SRO] Voting Representative.

[(11)](12) "Confidential Information" means, except to the extent covered by the definitions for Restricted Information, Highly Confidential Information, or Public Information: (i) any non-public data or information designated as Confidential by the Operating Committee pursuant to Section 4.3; (ii) any document generated by a Member and designated by that Member as Confidential; and (iii) the individual views and statements of Covered Persons and SEC staff disclosed during a meeting of the Operating Committee or any subcommittees thereunder.

[(12)](13) "Control" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

[(13)](14) "Covered Persons" means representatives of the Members (including the [SRO]Voting Representative, alternate Voting Representative, and Member Observers), members of the Advisory Committee, SRO Applicants, SRO Applicant Observers, the Administrator, the Interim Administrator(s), and the Processors; Affiliates, employees, and Agents of the Operating Committee, a Member, the Administrator, the Interim Administrator(s), and the Processors; and any third parties invited to attend meetings of the Operating Committee or subcommittees. Covered Persons do not include staff of the SEC.

[(14)](15) "CQ Plan" means the Restated CQ Plan.

[(15)](16) "CT Feeds" means the CT Quote Data Feed(s) and the CT Trade Data Feed(s).

[(16)](17) "CT Quote Data Feed(s)" means the service(s) that provides Vendors and Subscribers with (i) National Best Bids and Offers and their sizes and the Members' identifiers providing the National Best Bids and Offers; (ii) each Member's Best Bids and Offers and their sizes and the Member's identifier; and (iii) in the case of FINRA, the identifier of the FINRA Participant(s) that constitute(s) FINRA's Best Bids and Offers, in each case for Eligible Securities.

[(17)](18) "CT Trade Data Feed(s)" means the service(s) that provides Vendors and Subscribers with Transaction Reports for Eligible Securities.

[(18)](19) "CTA Plan" means the Second Restatement of the CTA Plan.

[(19)](20) "Current" means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processors.

[(20)](21) "Delaware Act" means the Delaware Limited Liability Company Act, Title 6, Chapter 18, §§ 18-101, et seq., and any successor statute, as amended.

[(21)](22) "Distribution" means a distribution to the Members of revenues of the Company under this Agreement pursuant to Section 8.3 and Exhibit D of the Agreement.

[(22)](23) "Eligible Security" means (i) any equity security, as defined in Section 3(a)(11) of the Exchange Act, or (ii) a security that trades like an equity security, in each case that is listed on a national securities exchange.

[(23)](24) "ET" means Eastern Time.

[(24)](25) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

[(25)](26) "Executive Session" means a meeting of the Operating Committee pursuant to Section 4.4(g), which includes [SRO]Voting Representatives, Member Observers, SEC Staff, and other persons as deemed appropriate by a majority vote of the [SRO]Voting Representatives.

[(26)](27) "Extraordinary Market Activity" means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processors or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period.

[(27)](28) "Fees" means fees charged to Vendors and Subscribers for Transaction Reports and Quotation Information in Eligible Securities.

[(28)](29) "Final Decision of the Operating Committee" means an action or inaction of the Operating Committee as a result of the vote of the Operating Committee, but will not include the individual votes of a Voting Representative.

[(29)](30) "FINRA" means the Financial Industry Regulatory Authority, Inc.

[(30)](31) "FINRA Participant" means a FINRA member that utilizes the facilities of FINRA pursuant to applicable FINRA rules.

[(31)](32) "Fiscal Year" means the fiscal year of the Company adopted pursuant to Section 10.1(a) of this Agreement.

[(32)](33) "GAAP" means United States generally accepted accounting principles in effect from time to time, consistently applied.

[(33)](34) "Governmental Authority" means (a) the U.S. federal government or government of any state of the U.S., (b) any instrumentality or agency of any such government, (c) any other individual, entity or organization authorized by law to perform any executive, legislative, judicial, regulatory, administrative, military or police functions of any such government, or (d) any intergovernmental organization of U.S. entities, but "Governmental Authority" excludes any self-regulatory organization registered with the Commission.

[(34)](35) "Highly Confidential Information" means any highly sensitive Member-specific, customer-specific, individual-specific, or otherwise sensitive information relating to the Operating Committee, Members, Vendors, Subscribers, or customers that is not otherwise Restricted Information. Highly Confidential Information includes: the Company's contract negotiations with the Processors, or Administrator or Interim Administrator(s); personnel matters that affect the employees of SROs or the Company; information concerning the intellectual property of Members or customers; and any document subject to the Attorney-Client Privilege, Work Product Doctrine, or any other [applicable]privilege or immunity recognized under Applicable Law.

[(35)](36) "Limit Up Limit Down" means the Plan to Address Extraordinary Market Volatility pursuant to Rule 608 of Regulation NMS under the Exchange Act.

[(36)](37) "Losses" means losses, judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements, and reasonable expenses (including reasonable attorneys' fees) actually incurred by such Company Indemnified Party as a Party to a Proceeding.

[(37)](38) "Market" means (i) in respect of FINRA or a national securities association, the facilities through which FINRA Participants display quotations and report transactions in Eligible Securities to FINRA and (ii) in respect of each national securities exchange, the marketplace for Eligible Securities that such exchange operates.

[(38)](39) "Market-Wide Circuit Breaker" means a halt in trading in all stocks in all Markets under the rules of a Primary Listing Market.

[(39)](40) "Material SIP Latency" means a delay of quotation or last sale price information in one or more securities between the time data is received by the Processors and the time the Processors disseminate the data, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future.

[(40)](41) "Member Observer" means any employee of a Member or any attorney to a Member (other than a Voting Representative) that a Member determines is necessary in connection with such Member's compliance with its obligations under Rule 608(c) of Regulation NMS to attend Operating Committee and subcommittee meetings, provided that the designation of the Member Observer is consistent with the prohibition in Section 4.11(b)(i).

[(41)](42) "Membership Fee" means the fee to be paid by a new Member pursuant to Section 3.2.

[(42)](43) "Membership Interest" means an interest in the Company owned by a Member.

[(43)](44) "Nasdaq" means The Nasdaq Stock Market LLC.

[(44)](45) "National Best Bid and Offer" has the meaning ascribed to the term "national best bid and national best offer" by Rule 600(b)(43) of Regulation NMS.

[(45)](46) "National securities association" means a securities association that is registered under Section 15A of the Exchange Act

[(46)](47) "National securities exchange" means a securities exchange that is registered under Section 6 of the Exchange Act.

[(47)](48) "Network A Security" means an Eligible Security for which NYSE is the Primary Listing Market.

[(48)](49) "Network B Security" means an Eligible Security for which a national securities exchange other than NYSE or Nasdaq is the Primary Listing Market.

[(49)](50) "Network C Security" means an Eligible Security for which Nasdaq is the Primary Listing Market.

[(50)](51) "Non-Affiliated SRO" means a Member that is not affiliated with any other Member.

[(51)](52) "NYSE" means the New York Stock Exchange LLC.

[(52)](53) "Officer" means each individual designated as an officer of the Company pursuant to Section 4.8.

[(53)](54) "Operating Committee" means the committee established under Article IV of this Agreement, each member of which shall be deemed a "manager" (as defined in the Delaware Act) and shall be referred to herein as a Voting Representative.

[(54)](55) "Operational Halt" means a halt in trading in one or more securities only on a Member's Market declared by such Member and is not a Regulatory Halt.

[(55)](56) "Operative Date" means the date that (i) the Members conduct, through the Company, the Processor and Administrator functions related to the public dissemination of real-time consolidated equity market data for Eligible Securities required by the Commission to be performed by the Members under the Exchange Act and the rules and regulations thereunder and (ii) the CQ Plan, CTA Plan, and UTP Plan cease their operations.

[(56)](57) "Party to a Proceeding" means a Company Indemnified Party that is, was, or is threatened to be made, a party to a Proceeding, or is involved in a Proceeding, by reason of the fact that such Company Indemnified Party is or was a Member, or a[n SRO] Voting Representative.

[(57)](58) "PDP" means a Member or non-Member's proprietary market data product that includes Transaction Reports and Quotation Information data in Eligible Securities from a Member's Market or a Trading Center, and if from a Member, is filed with the Commission.

[(58)](59) "Person" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

[(59)](60) "Primary Listing Market" means the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.

[(60)](61) "Proceeding" means any threatened, pending or completed suit, proceeding, or other action, whether civil, criminal, administrative, or arbitrative, or any appeal in such action or any inquiry or investigation that could lead to such an action.

[(61)](62) "Processor(s)" means the entity(ies) selected by the Company to perform the processing functions described in this Agreement and pursuant to the Processor Services Agreement(s), including the operation of the System.

[(62)](63) "Public Information" means: (i) any information that is not either Restricted Information or Highly Confidential Information or that has not been designated as Confidential Information; (ii) any Confidential Information that has been approved by the Operating Committee for release to the public; (iii) the duly approved minutes of the Operating Committee with detail sufficient to inform the public on matters under discussion and the views expressed thereon (without attribution); (iv) Vendor, Subscriber and performance metrics; (v) Processor transmission metrics; and (vi) any information that is otherwise publicly available, except for information made public as a result of a violation of the Company's Confidentiality Policy or Applicable Law. Public Information includes, but is not limited to, any topic discussed during a meeting of the Operating Committee, an outcome of a topic discussed, or a Final Decision of the Operating Committee.

[(63)](64) "Regulatory Halt" means a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.

[(64)](65) "Restricted Information" means highly sensitive customer-specific financial information, customer-specific audit information, other customer financial information, and personal identifiable information.

[(65)](66) "Quotation Information" means all bids, offers, displayed quotation sizes, market center identifiers and, in the case of FINRA, the identifier of the FINRA Participant that entered the quotation, all withdrawals, and all other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processors pursuant to this Agreement.

[(66)](67) "Regular Trading Hours" has the meaning provided in Rule 600(b)(68) of Regulation NMS. Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

[(67)](68) "Retail Representative" means an individual who (1) represents the interests of retail investors, (2) has experience working with or on behalf of retail investors, (3) has the

requisite background and professional experience to understand the interests of retail investors, the work of the Operating Committee of the Company, and the role of market data in the U.S. equity market, and (4) is not affiliated with a Member or broker-dealer.

[(68)](69) "Self-regulatory organization" or "SRO" has the meaning provided in Section 3(a)(26) of the Exchange Act.

[(69)](70) "SIP Halt" means a Regulatory Halt to trading in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency.

[(70)](71) "SIP Halt Resume Time" means the time that the Primary Listing Market determines as the end of a SIP Halt.

[(71)](72) "SIP Outage" means a situation in which a Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processors, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the affected Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future.

[(72)](73) "SRO Applicant" means (1) any Person that is not a Member and for which the Commission has published a Form 1 to be registered as a national securities exchange or national securities association to operate a Market, or (2) a national securities exchange that is not a Member and for which the Commission has published a proposed rules change to operate a Market.

[(73)](74) "SRO Group" means a group of Members that are Affiliates.

[(74)](75) "Subscriber" means a Person that receives Current Transaction Reports or Quotation Information from the Processors or a Vendor and that itself is not a Vendor.

[(75)](76) "System" means all data processing equipment, software, communications facilities, and other technology and facilities, utilized by the Company or the Processors in connection with the collection, consolidation, and dissemination of Transaction Reports, Quotation Information, and other information concerning Eligible Securities.

[(76)](77) "Taxes" means taxes, levies, imposts, charges, and duties (including withholding tax, stamp, and transaction duties) imposed by any taxing authority together with any related interest, penalties, fines, and expenses in connection with them.

[(77)](78) "Trading Center" has the same meaning as that term is defined in Rule 600(b)(82) of Regulation NMS.

[(78)](79) "Transaction Reports" means reports required to be collected and made available pursuant to this Agreement containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information,

including a buy/sell/cross indicator, trade modifiers, and any other required information reflecting completed transactions in Eligible Securities.

[(79)](80) "Transfer" means to directly sell, transfer, assign, pledge, encumber, hypothecate, or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option, or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation, or similar disposition of any Membership Interests owned by a Person or any interest (including a beneficial interest) in any Membership Interests owned by a Person. "Transfer" when used as a noun shall have a correlative meaning.

[(80)](81) "UTP Plan" means 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.

[(81)](82) "Vendor" means a Person that the Administrator has approved to re-distribute Current Transaction Reports or Quotation Information to the Person's employees or to others.

[(82)](83) "Voting Representative" means an individual designated by each SRO Group and each Non-Affiliated SRO pursuant to Section 4.2(a) to vote on behalf of such SRO Group or such Non-Affiliated SRO.

Section 1.2 Interpretation.

For purposes of this Agreement: (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. Unless the context otherwise requires, references herein: (x) to Articles, Sections, and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document mean such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute mean such statute as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Article II.
ORGANIZATION

Section 2.1 Formation.

(a) The Members formed the Company as a limited liability company on [●], [●] pursuant to the Delaware Act by filing a certificate of formation (the "Certificate") with the Delaware Secretary of State.

(b) This Agreement shall constitute the "limited liability company agreement" (as that term is used in the Delaware Act) of the Company. The rights, powers, duties, obligations, and liabilities of the Members shall be determined pursuant to the Delaware Act and this Agreement. To the extent that the rights, powers, duties, obligations, and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the Delaware Act in the absence of such provision, this Agreement shall, to the extent permitted by the Delaware Act, control.

Section 2.2 Name.

The name of the Company is "CT Plan LLC" and all Company business shall be conducted in that name or such other name or names as the Operating Committee may designate; provided, that the name shall always contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC."

Section 2.3 Registered Office; Registered Agent; Principal Office; Other Offices.

(a) The registered office of the Company required by the Delaware Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Operating Committee may designate from time to time in the manner provided by the Delaware Act and Applicable Law.

(b) The registered agent for service of process of the Company in the State of Delaware shall be the initial registered agent named in the Certificate or such other Person or Persons as the Operating Committee may designate from time to time in the manner provided by the Delaware Act and Applicable Law.

(c) The principal office of the Company shall be located at such place as the Operating Committee may designate from time to time, which need not be in the State of Delaware, and the Company shall maintain its books and records there. The Company shall give prompt notice to each of the Members of any change to the principal office of the Company.

(d) The Company may have such other offices as the Operating Committee may designate from time to time.

Section 2.4 Purpose; Powers.

(a) The purposes of the Company are to engage in the following activities on behalf of the Members:

(i) the collection, consolidation, and dissemination of Transaction Reports, Quotation Information, and such other information concerning Eligible Securities as the Members shall agree as provided herein;

(ii) contracting for the distribution of such information;

(iii) contracting for and maintaining facilities to support any activities permitted in this Agreement and guidelines adopted hereunder, including the operation and administration of the System;

(iv) providing for those other matters set forth in this Agreement and in all guidelines adopted hereunder;

(v) operating the System to comply with Applicable Laws; and

(vi) engaging in any other business or activity that now or hereafter may be necessary, incidental, proper, advisable, or convenient to accomplish any of the foregoing purposes and that is not prohibited by the Delaware Act, the Exchange Act, or other Applicable Law.

(b) The Company shall have all the powers necessary or convenient to carry out the purposes for which it is formed, including the powers granted by the Delaware Act.

(c) It is expressly understood that each Member shall be responsible for the collection of Transaction Reports and Quotation Information within its Market and that nothing in this Agreement shall be deemed to govern or apply to the manner in which each Member does so.

Section 2.5 Term.

The term of the Company commenced as of the date the Certificate was filed with the Secretary of State of the State of Delaware, and shall continue in existence perpetually until the Company is dissolved in accordance with the provisions of the Certificate or this Agreement. Notwithstanding the foregoing, this Agreement shall not become effective until the Effective Date.

Section 2.6 No State-Law Partnership.

The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement for any purposes other than as set forth in Sections 10.2 and 10.3, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter of this Agreement shall be construed to suggest otherwise.

Article III.
MEMBERSHIP

Section 3.1 Members.

The Members of the Company shall consist of the Persons identified in Exhibit A, as updated from time to time to reflect the admission of new Members pursuant to this Agreement.

Section 3.2 New Members.

(a) Any national securities association or national securities exchange whose market, facilities, or members, as applicable, trades Eligible Securities may become a Member by (i) providing written notice to the Company, (ii) executing a joinder to this Agreement, at which time Exhibit A shall be amended to reflect the addition of such association or exchange as a Member, (iii) paying a Membership Fee to the Company as determined pursuant to Section 3.2(b), and (iv) executing a joinder to any other agreements to which all of the other Members have been made party in connection with being a Member. Membership Fees paid shall be added to the general revenues of the Company.

(b) The Membership Fee shall be based upon the following factors:

(i) the portion of costs previously paid by the Company (or by the Members prior to the formation of the Company) for the development, expansion, and maintenance of the System which, under GAAP, would have been treated as capital expenditures and would have been amortized over the five years preceding the admission of the new Member (and for this purpose all such capital expenditures shall be deemed to have a five-year amortizable life); and

(ii) an assessment of costs incurred and to be incurred by the Company for modifying the System or any part thereof to accommodate the new Member, which are not otherwise required to be paid or reimbursed by the new Member.

(c) Participants of the CQ Plan, CTA Plan, and UTP Plan will not be required to pay the Membership Fee.

Section 3.3 Transfer of Membership Interests.

Except as set forth in Section 3.4, a Member shall not have the right to Transfer (whether in whole or in part) its Membership Interest in the Company.

Section 3.4 Withdrawal from Membership.

(a) Any Member may voluntarily withdraw from the Company at any time on not less than 30 days' prior written notice (the "Withdrawal Date"), by (i) providing such notice of such withdrawal to the Company, (ii) causing the Company to file with the Commission an amendment to effectuate the withdrawal and (iii) Transferring such Member's Membership Interest to the Company.

(b) A Member shall automatically be withdrawn from the Company upon such Member no longer being a registered national securities association or registered national securities exchange. Such Member's Membership Interest will automatically transfer to the Company. The Company shall file with the Commission an amendment to effectuate the withdrawal.

(c) A withdrawal of a Member shall not be effective until approved by the Commission after filing an amendment to the Agreement in accordance with Section 13.5.

(d) From and after the Withdrawal Date of such Member:

(i) Such Member shall remain liable for any obligations under this Agreement of such Member (including indemnification obligations) arising prior to the Withdrawal Date (but such Member shall have no further obligations under this Agreement or to any of the other Members arising after the Withdrawal Date);

(ii) Such Member shall be entitled to receive a portion of the Net Distributable Operating Income (if any) in accordance with Exhibit D attributable to the period prior to the Withdrawal Date of such Member;

(iii) Such Member shall cease to have the right to have its Transaction Reports, Quotation Information, or other information disseminated over the System; and

(iv) Profits and losses of the Company shall cease to be allocated to the Capital Account of such Member.

Section 3.5 Member Bankruptcy.

In the event a Member becomes subject to one or more of the events of bankruptcy enumerated in Section 18-304 of the Delaware Act, that event by itself shall not cause a withdrawal of such Member from the Company so long as such Member continues to be a national securities association or national securities exchange.

Section 3.6 Undertaking by All Members.

Following the [Operative]Effective Date, each Member shall be required, pursuant to Rule 608(c) of Regulation NMS, to comply with the provisions hereof and enforce compliance by its members with the provisions hereof.

Section 3.7 Obligations and Liability of Members.

(a) Except as otherwise provided in this Agreement or Applicable Law, no Member shall be obligated to contribute capital or make loans to the Company.

(b) Except as provided in this Agreement or Applicable Law, no Member shall have any liability whatsoever in its capacity as a Member, whether to the Company, to any of the Members, to the creditors of the Company or to any other Person, for the debts, liabilities, commitments or any other obligations of the Company or for any losses of the Company.

Notwithstanding the foregoing, to the extent that amounts have not been paid to the Processors or Administrator under the terms of the Processor Services Agreements and Administrative Services Agreement, respectively, or this Agreement, as and when due, (i) each Member shall be obligated to return to the Company its pro rata share of any moneys distributed to such Member in the one year period prior to such default in payment (such pro rata share to be based upon such Member's proportionate receipt of the aggregate distributions made to all Members in such one year period) until an aggregate amount equal to the amount of any such defaulted payments has been re-contributed to the Company and (ii) the Company shall promptly pay such amount to the Processors or Administrator, as applicable.

(c) In accordance with the Delaware Act, a member of a limited liability company may, under certain circumstances, be required to return amounts previously distributed to such member. It is the intent of the Members that no distribution to any Member pursuant to this Agreement shall be deemed a return of money or other property paid or distributed in violation of the Delaware Act. The payment of any such money or distribution of any such property to a Member shall be deemed to be a compromise within the meaning of the Delaware Act, and the Member receiving any such money or property shall not be required to return any such money or property to any Person; provided, however, that a Member shall be required to return to the Company any money or property distributed to it in clear and manifest accounting or similar error or as otherwise provided in Section 3.7(b). However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of the Operating Committee.

(d) No Member (unless duly authorized by the Operating Committee) has the authority or power to represent, act for, sign for or bind the Company or to make any expenditure on behalf of the Company; provided, however, that the Tax Matters Partner may represent, act for, sign for or bind the Company as permitted under Sections 10.2 and 10.3 of this Agreement.

(e) To the fullest extent permitted by law, no Member shall, in its capacity as a Member, owe any duty (fiduciary or otherwise) to the Company or to any other Member other than the duties expressly set forth in this Agreement.

Article IV.
MANAGEMENT OF THE COMPANY

Section 4.1 Operating Committee.

[(f)](a) Except for situations in which the approval of the Members is required by this Agreement, the Company shall be managed by the Operating Committee. Unless otherwise expressly provided to the contrary in this Agreement, no Member shall have authority to act for, or to assume any obligation or responsibility on behalf of, the Company, without the prior approval of the Operating Committee. Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, the Operating Committee shall have full and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company, and to take all such actions

as it deems necessary or appropriate to accomplish the purposes of the Company, including the following:

(i) proposing amendments to this Agreement or implementing other policies and procedures as necessary to ensure prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to Transaction Reports and Quotation Information in Eligible Securities and the fairness and usefulness of the form and content of that information;

(ii) selecting, overseeing, specifying the role and responsibilities of, and evaluating the performance of, the Administrator, the Processors, an auditor, and other professional service providers, provided that any expenditures for professional services that are paid for from the Company's revenues must be for activities consistent with the terms of this Agreement and must be authorized by the Operating Committee;

(iii) developing and maintaining fair and reasonable Fees and consistent terms for the distribution, transmission, and aggregation of Transaction Reports and Quotation Information in Eligible Securities;

(iv) reviewing the performance of the Processors and ensuring the public reporting of Processors' performance and other metrics and information about the Processors;

(v) assessing the marketplace for equity market data products and ensuring that the CT Feeds are priced in a manner that is fair and reasonable, and designed to ensure the widespread availability of CT Feeds data to investors and market participants;

(vi) designing a fair and reasonable revenue allocation formula for allocating plan revenues to be applied by the Administrator, and overseeing, reviewing, and revising that formula as needed;

(vii) interpreting the Agreement and its provisions; and

(viii) carrying out such other specific responsibilities as provided under this Agreement.

[(g)](b) The Operating Committee may delegate all or part of its administrative functions under this Agreement, excluding those administrative functions to be performed by the Administrator pursuant to Section 6.1, to a subcommittee, to one or more of the Members, or to other Persons (including the Administrator), and any Person to which administrative functions are so delegated shall perform the same as agent for the Company, in the name of the Company. For the avoidance of doubt, no delegation to a subcommittee shall contravene Section 4.3 and no subcommittee shall take actions requiring approval of the Operating Committee pursuant to Section 4.3 unless such approval shall have been obtained. Any authority delegated hereunder is subject to the provisions of Section 4.3 hereof.

[(h)](c) It is expressly agreed and understood that neither the Company nor the Operating Committee shall have authority in any respect of any Member's proprietary systems.

Neither the Company nor the Operating Committee shall have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Member's Market, or, in the case of FINRA, from FINRA Participants.

Section 4.2 Composition and Selection of Operating Committee.

(a) Voting Representatives. The Operating Committee shall include one Voting Representative designated by each SRO Group and each Non-Affiliated SRO to vote on behalf of such SRO Group or such Non-Affiliated SRO. Each SRO Group and each Non-Affiliated SRO may designate an alternate individual or individuals who shall be authorized to vote on behalf of such SRO Group or such Non-Affiliated SRO, respectively, in the absence of the designated Voting Representative.

(b) An SRO Applicant will be permitted to appoint one individual to attend (subject to Section 4.4(i)) regularly scheduled Operating Committee meetings in the capacity of a non-voting observer (each, an "SRO Applicant Observer"). Each SRO Applicant may designate an alternate individual or individuals who shall be authorized to act as the SRO Applicant Observer on behalf of the SRO Applicant in the absence of the designated SRO Applicant Observer. If the SRO Applicant's Form 1 petition or Section 19(b)(1) filing is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the SRO Applicant will no longer be eligible to have an SRO Applicant Observer attend Operating Committee meetings.

(c) Notwithstanding anything to the contrary herein, (i) a national securities exchange that has ceased operations as a Market (or has yet to commence operation as a Market) and that is a Non-Affiliated SRO will not be permitted to designate a Voting Representative and (ii) an SRO Group in which all national securities exchanges have ceased operations as a Market (or have yet to commence operation as a Market) will not be permitted to designate a Voting Representative. Such SRO Group or Non-Affiliated SRO may attend the Operating Committee as an observer but may not attend the Executive Session of the Operating Committee. In the event such an SRO Group or Non-Affiliated SRO does not commence operation as a Market for six months after first attending an Operating Committee meeting, such SRO Group or Non-Affiliated SRO may no longer attend the Operating Committee until it commences/re-commences operation as a Market.

Section 4.3 Action of Operating Committee.

(a) Each Voting Representative shall be authorized to cast one vote on behalf of the SRO Group or Non-Affiliated SRO that he or she represents, provided, however, that each Voting Representative representing an SRO Group or Non-Affiliated SRO whose combined market center(s) have consolidated equity market share of more than fifteen (15) percent during four of the six calendar months preceding an Operating Committee vote shall be authorized to cast two votes. For purposes of this Section 4.3(a), "consolidated equity market share" means the average daily dollar equity trading volume of Eligible Securities of an SRO Group or Non-Affiliated SRO as a percentage of the average daily dollar equity trading volume of all of the SRO Groups and Non-Affiliated SROs, as reported under this Agreement or under the CQ, CTA, and UTP Plans. For the avoidance of doubt, FINRA shall not be considered to operate a market center within the meaning of this Section 4.3(a) solely by virtue of facilitating quoting on the

FINRA Alternative Display Facility or trade reporting of Eligible Securities through the FINRA/Nasdaq Trade Reporting Facility Carteret, the FINRA/Nasdaq Trade Reporting Facility Chicago, the FINRA/NYSE Trade Reporting Facility, or any other trade reporting facility that FINRA may operate from time to time in affiliation with a registered national securities exchange to provide a mechanism for FINRA Participants to report transactions in Eligible Securities effected otherwise than on an exchange.

(b) All actions of the Operating Committee will require an affirmative vote of not less than (2/3rd) two-thirds of all votes allocated in the manner described in Section 4.3(a) to Voting Representatives who are eligible to vote on such action.

(c) Notwithstanding Section 4.3(b), the following actions will require only a majority vote of the Operating Committee:

(i) the election of the Chair and other Officers of the Plan;

(ii) the selection of members of the Advisory Committee pursuant to Section 4.7;

[(ii)](iii) the decision to enter Executive Session pursuant to Section 4.4(g), except for matters considered pursuant to Section 4.4(g)(i)(E);

[(iii)](iv) the decision to discuss a matter in a legal subcommittee pursuant to Section 4.8(d); and

[(iv)](v) decisions concerning the operation of the Company as an LLC as specified in Section 10.3 and Section 11.2.

Section 4.4 Meetings of the Operating Committee.

(a) Subject to Section 4.4(g), meetings of the Operating Committee may be attended by each Voting Representative, Member Observers, SRO Applicant Observers, Advisory Committee members, SEC staff, and other persons as deemed appropriate by the Operating Committee. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee. Member Observers shall be entitled to attend and participate in any discussion at any such meeting, unless attendance or participation would be inconsistent with the provisions of Section 4.11(b), but shall not be entitled to vote on any matter.

(b) Special meetings of the Operating Committee may be called by the Chair on at least 24 hours' notice to each Voting Representative and all persons eligible to attend Operating Committee meetings.

(c) Any action requiring a vote can be taken at a meeting only if a quorum of all Voting Representatives is present. A quorum is equal to the minimum votes necessary to obtain approval under Section 4.3(b), i.e., Voting Representatives reflecting 2/3rd of Operating Committee votes eligible to vote on such action.

(i) Any Voting Representative recused from voting on a particular action (i) mandatorily pursuant to Section 4.10(b) or (ii) upon a Voting Representative's voluntary recusal, shall not be considered in the numerator or denominator of the calculations in paragraph (c) for determining whether a quorum is present.

(ii) A Voting Representative is considered present at a meeting only if such Voting Representative is either in physical attendance at the meeting or participating by conference telephone or other electronic means that enables each Voting Representative to hear and be heard by all others present at the meeting.

(d) A summary of any action sought to be resolved at a meeting shall be sent to each Voting Representative entitled to vote on such matter at least one week prior to the meeting via electronic mail, portal notification, or regular U.S. or private mail (or if one week is not practicable, then with as much time as may be reasonably practicable under the circumstances); provided, however, that this requirement to provide a summary of any action prior to a meeting may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section 4.3 above.

(e) Beginning with the first quarterly meeting of the Operating Committee following the [Operative]Effective Date, the Chair of the Operating Committee shall be elected for a one-year term from the constituent Voting Representatives (and an election for the Chair shall be held every year). Subject to the requirements of Section 4.3 hereof, the Chair shall have the authority to enter into contracts on behalf of the Company and otherwise bind the Company, but only as directed by the Operating Committee. The Chair shall designate a Person to act as Secretary to record the minutes of each meeting. The location of meetings shall be in a location capable of holding the number of attendees of such meetings, or such other locations as may from time to time be determined by the Operating Committee.

(i) To elect a Chair, the Operating Committee will elicit nominations for those individuals to be considered for Chair.

(ii) In the event that no nominated Person is elected by an affirmative vote of the Operating Committee pursuant to Section 4.3(c), the Person(s) with the lowest number of votes will be eliminated from consideration. The Operating Committee will repeat this process until a Person is elected by affirmative vote of the Operating Committee pursuant to Section 4.3. In the event two candidates remain and neither is elected by an affirmative vote of the Operating Committee pursuant to Section 4.3(c), the Person receiving the most votes from Voting Representatives will be elected.

(f) Meetings may be held by conference telephone or other electronic means that enables each Voting Representative to hear and be heard by all others present at the meeting.

(g) Voting Representatives, Member Observers, SEC Staff, and other persons as deemed appropriate by a majority vote of the Voting Representatives may meet in Executive Session of the Operating Committee to discuss an item of business that falls within the topics identified in subsection (i) below and for which it is appropriate to exclude the Advisory Committee. A request to create an Executive Session must be included on the written agenda for

an Operating Committee meeting, along with the clearly stated rationale as to why such item to be discussed would be appropriate for Executive Session. The creation of an Executive Session will be by a majority vote of Voting Representatives with votes allocated pursuant to Section 4.3(a)(1). The Executive Session shall only discuss the topic for which it was created and shall be disbanded upon fully discussing the topic.

(i) Items for discussion within an Executive Session [should]shall be limited to the following topics[as]:

(A) Any topic that requires discussion of Highly Confidential Information;

(B) Vendor or Subscriber Audit Findings;

(C) Litigation matters;

(D) Responses to regulators with respect to inquiries, examinations, or findings; and

(E) Other discrete matters approved by the Operating Committee.

(ii) The mere fact that a topic is controversial or a matter of dispute does not, by itself, make a topic appropriate for Executive Session. The minutes for an Executive Session shall include the reason for including any item in Executive Session.

(iii) Requests to discuss a topic in Executive Session must be included on the written agenda for the Operating Committee meeting, along with the clearly stated rationale for each topic as to why such discussion is appropriate for Executive Session. Such rationale may be that the topic to be discussed falls within the list provided in subparagraph (g)(i).

Section 4.5 Certain Transactions.

The fact that a Member or any of its Affiliates is directly or indirectly interested in or connected with any Person employed by the Company to render or perform a service, or from which or to whom the Company may buy or sell any property, shall not prohibit the Company from employing or dealing with such Person.

Section 4.6 Company Opportunities.

(a) Each Member, its Affiliates, and each of their respective equity holders, controlling persons and employees may have business interests and engage in business activities in addition to those relating to the Company. Neither the Company nor any Member shall have any rights by virtue of this Agreement in any business ventures of any such Person.

(b) Each Member expressly acknowledges that (i) the other Members are permitted to have, and may presently or in the future have, investments or other business relationships with Persons engaged in the business of the Company other than through the Company (an "Other

Business"), (ii) the other Members have and may develop strategic relationships with businesses that are and may be competitive or complementary with the Company, (iii) the other Members shall not be obligated to recommend or take any action that prefers the interests of the Company or any Member over its own interests, (iv) none of the other Members will be prohibited by virtue of their ownership of equity in the Company or service on the Operating Committee (or body performing similar duties) from pursuing and engaging in any such activities, (v) none of the other Members will be obligated to inform or present to the Company any such opportunity, relationship, or investment, (vi) such Member will not acquire or be entitled to any interest or participation in any Other Business as a result of the participation therein of any of the other Members, and (vii) the involvement of another Member in any Other Business in and of itself will not constitute a conflict of interest by such Person with respect to the Company or any of the Members.

Section 4.7 Advisory Committee

(a) Formation. Notwithstanding any other provision of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(b) Composition. [Members of the Advisory Committee shall be selected for two year terms as follows:

(i) Operating Committee Selections. By affirmative vote of a majority of the Members entitled to vote, t]The Operating Committee shall, by majority vote, select at least one representative from each of the following categories to be members of the Advisory Committee: (A) an institutional investor; (B) a broker-dealer with a predominantly retail investor customer base; (C) a broker-dealer with a predominantly institutional investor customer base; (D) a securities market data vendor that is not affiliated or associated with a Member, broker-dealer, or investment adviser with third-party clients; (E) an issuer of NMS stock that is not affiliated or associated with a Member, broker-dealer, or investment adviser with third-party clients; and (F) a Retail Representative. The Operating Committee shall not select any person employed by or affiliated with any Member or its affiliates or facilities.

[(ii) Member Selections. Each Member shall have the right to select one member of the Advisory Committee. A Member shall not select any person employed by or affiliated with any Member or its affiliates or facilities.]

(c) Term: Members of the Advisory Committee shall be selected for two-year terms.

(d) Function. Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan.

[(d)](e) Not Members of the Company. For the sake of clarity, members of the Advisory Committee are not Members of the Company.

Section 4.8 Subcommittees.

(a) Subject to Section 4.1, the Operating Committee shall have the power and right, but not the obligation, to create and disband subcommittees of the Operating Committee and to determine the duties, responsibilities, powers, and composition of such subcommittees. Subcommittee chairs will be selected by the Operating Committee from Voting Representatives. Notwithstanding the foregoing, the Operating Committee may not delegate to a subcommittee those administrative functions to be performed by the Administrator.

(b) Except as provided in Section 4.8(d), the Secretary or designee shall prepare minutes of all subcommittee meetings and such minutes will be made available to the Operating Committee and members of the Advisory Committee.

(c) Voting Representatives, the Advisory Committee, Member Observers, SEC Staff, and other persons as deemed appropriate by the Operating Committee may attend meetings of any subcommittees.

(d) Notwithstanding paragraph (c), Voting Representatives, Member Observers, and other persons as deemed appropriate by majority vote of the Voting Representatives may meet in a subcommittee to discuss an item that exclusively affects the Members with respect to: (1) litigation matters or responses to regulators with respect to inquiries, examinations, or findings; and (2) other discrete legal matters approved by the Operating Committee. The Secretary shall prepare the minutes of such subcommittee's meetings, and such minutes shall include, (i) attendance at the meeting; (ii) the subject matter of each item discussed; (iii) sufficient non-privileged information to identify the rationale for referring the matter to the legal subcommittee, and (iv) the privilege or privileges claimed with respect to that item. Such minutes will be made available only to the Voting Representatives, Member Observers, and other persons deemed appropriate by a majority vote of the Operating Committee.

Section 4.9 Officers.

(a) Except as provided in Section 4.4(e), the Operating Committee may (but need not), from time to time, designate and appoint one or more persons as an Officer of the Company. Other than the Chair, no Officer need be a Voting Representative. Any Officers so designated shall have such authority and perform such duties as the Operating Committee may, from time to time, delegate to them. Any such delegation may be revoked at any time by the Operating Committee. The Operating Committee may assign titles to particular Officers. Each Officer shall hold office until such Officer's successor shall be duly designated or until such Officer's death, resignation, or removal as provided in this Agreement. Any number of offices may be held by the same individual. Officers shall not be entitled to receive salary or other compensation, unless approved by the Operating Committee.

(b) Any Officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified in the notice, or if no time be specified, at the time of its receipt by the Operating Committee. The acceptance of a resignation shall not be necessary to make it effective.

(c) Any Officer may be removed at any time upon the majority vote of the [Members]Operating Committee.

Section 4.10 Commission Access to Information and Records.

Nothing in this Agreement shall be interpreted to limit or impede the rights of the Commission or SEC staff to access information and records of the Company or any of the Members (including their employees) pursuant to U.S. federal securities laws and the rules and regulations promulgated thereunder.

Section 4.11 Disclosure of Potential Conflicts of Interest; Recusal.

(a) Disclosure Requirements. The Members (including any Member Observers), the Processors, the Administrator, members of the Advisory Committee, and each service provider or subcontractor engaged in Company business (including the audit of Subscribers' data usage) that has access to Restricted or Highly Confidential information (for purposes of this section, "Disclosing Parties") shall complete the applicable questionnaire to provide the required disclosures set forth in subsection (c) below to disclose all material facts necessary to identify potential conflicts of interest. The Operating Committee, a Member, Processors, or Administrator may not use a service provider or subcontractor on Company business unless that service provider or subcontractor has agreed in writing to provide the disclosures required by this section and has submitted completed disclosures to the Administrator prior to starting work. If state laws, rules, or regulations, or applicable professional ethics rules or standards of conduct, would act to restrict or prohibit a Disclosing Party from making any particular required disclosure, a Disclosing Party shall refer to such law, rule, regulation, or professional ethics rule or standard and include in response to that disclosure the basis for its inability to provide a complete response. This does not relieve the Disclosing Party from disclosing any information it is not restricted from providing.

(i) A potential conflict of interest may exist when personal, business, financial, or employment relationships could be perceived by a reasonable objective observer to affect the ability of a person to be impartial.

(ii) Updates to Disclosures. Following a material change in the information disclosed pursuant to Section 4.11(a), a Disclosing Party shall promptly update its disclosures. Additionally, a Disclosing Party shall update annually any inaccurate information prior to the Operating Committee's first quarterly meeting of a calendar year.

(iii) Public Dissemination of Disclosures. The Disclosing Parties shall provide the Administrator with its disclosures and any required updates. The Administrator shall ensure that the disclosures are promptly posted to the Company's website.

(iv) The Company will arrange for Disclosing Parties that are not Members or members of the Advisory Committee to comply with the required disclosures and recusals under this Section 4.11 and Exhibit B in their respective agreements with either the Company, a Member, the Administrator, or the Processors.

(b) Recusal.

(i) A Disclosing Party that is a Member may not appoint as its Voting Representative, alternate Voting Representative, or a Member Observer a person that is responsible for or involved with the procurement for, or development, modeling, pricing, licensing (including all functions related to monitoring or ensuring a subscriber's compliance with the terms of the license contained in its data subscription agreement and all functions relating to the auditing of subscriber data usage and payment), or sale of PDP offered to customers of the CT Feeds if the person has a financial interest (including compensation) that is tied directly to the Disclosing Party's market data business or the procurement of market data and if that compensation would cause a reasonable objective observer to expect the compensation to affect the impartiality of the representative.

(ii) A Disclosing Party (including its representative(s), employees, and agents) will be recused from participating in Company activities if it has not submitted a required disclosure form or the Operating Committee votes that its disclosure form is materially deficient. The recusal will be in effect until the Disclosing Party submits a sufficiently complete disclosure form to the Administrator.

(iii) A Disclosing Party, including its representative(s), and its Affiliates and their representative(s), are recused from voting on matters in which it or its Affiliate (i) is seeking a position or contract with the Company or (ii) have a position or contract with the Company and whose performance is being evaluated by the Company.

(iv) All recusals, including a person's determination of whether to voluntarily recuse himself or herself, shall be reflected in the meeting minutes.

(c) Required Disclosures. As part of the disclosure regime, the Members, the Processors, the Administrator, members of the Advisory Committee, and service providers and subcontractors must respond to questions that are tailored to elicit responses that disclose the potential conflicts of interest as set forth in Exhibit B.

Section 4.12 Confidentiality Policy.

All Covered Persons are subject to the Confidentiality Policy set forth in Exhibit C to the Plan. The Company will arrange for Covered Persons that are not Voting Representatives, Member Observers, or members of the Advisory Committee to comply with the Confidentiality Policy under their respective agreements with either the Company, a Member, the Administrator, or the Processors.

Article V.
THE PROCESSORS; INFORMATION; INDEMNIFICATION

Section 5.1 General Functions of the Processors.

Subject to the general direction of the Operating Committee, as more fully set forth in the agreement to be entered into between the Company and the Processors (the "Processor Services Agreements"), the Company shall require the Processors to perform certain processing functions

on behalf of the Company. Among other things, the Company shall require the Processors to collect from the Members, and consolidate and disseminate to Vendors and Subscribers, Transaction Reports and Quotation Information in Eligible Securities in a manner designed to assure the prompt, accurate, and reliable collection, processing, and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner.

Section 5.2 Evaluation of the Processors.

The Processors' performance of their functions under the Processor Services Agreements shall be subject to review at any time as determined by a vote of the Operating Committee pursuant to Section 4.3; provided, however, that a review shall be conducted at least once every two calendar years but not more frequently than once each calendar year (unless the Processors have materially defaulted in their obligations under the Processor Services Agreements and such default has not been cured within the applicable cure period set forth in the Processor Services Agreements, in which event such limitation shall not apply). The Operating Committee may review the Processors at staggered intervals.

Section 5.3 Process for Selecting New Processors.

(a) No later than upon the termination or withdrawal of a Processor or the expiration of a Processor Services Agreement with a Processor, the Operating Committee shall establish procedures for selecting a new Processor (the "Processor Selection Procedures"). The Operating Committee, as part of the process of establishing Processor Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Agreement. The Operating Committee will not need to establish Processor Selection Procedures if the Operating Committee initially selects the CQ Plan and CTA Plan's processor and the UTP Plan's processor to provide the same services to the Company that are currently provided under the CQ Plan, CTA Plan, and UTP Plan.

(b) The Processor Selection Procedures shall be established by the affirmative vote of the Operating Committee pursuant to Section 4.3, and shall set forth, at a minimum:

(i) the entity that will:

(A) draft the Operating Committee's request for proposal for bids on a new Processor;

(B) assist the Operating Committee in evaluating bids for the new Processor; and

(C) otherwise provide assistance and guidance to the Operating Committee in the selection process;

(ii) the minimum technical and operational requirements to be fulfilled by the Processor;

(iii) the criteria to be considered in selecting the Processor; and

(iv) the entities (other than Voting Representatives) that are eligible to comment on the selection of the Processor.

Section 5.4 Transmission of Information to Processors by Members.

(a) Quotation Information.

(i) Each Member shall, during the time it is open for trading, be responsible for promptly collecting and transmitting to the Processors accurate Quotation Information in Eligible Securities through any means set forth in the Processor Services Agreements to ensure that the Company complies with its obligations under the Processor Services Agreements.

(ii) Quotation Information shall include:

(A) identification of the Eligible Security, using the Listing Market's symbol;

(B) the price bid and offered, together with size;

(C) for FINRA, the FINRA Participant along with the FINRA Participant's market participant identification or Member from which the quotation emanates;

(D) appropriate timestamps;

(E) identification of quotations that are not firm; and

(F) through appropriate codes and messages, withdrawals and similar matters.

(iii) In addition, Quotation Information shall include:

(A) in the case of a national securities exchange, the reporting Member's matching engine publication timestamp; or

(B) in the case of FINRA, the quotation publication timestamp that FINRA's bidding or offering member reports to FINRA's quotation facility in accordance with FINRA rules. In addition, if FINRA's quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processors with the time of the quotation as published on the quotation facility's proprietary feed. FINRA shall convert any quotation times reported to it to nanoseconds and shall furnish such times to the Processors in nanoseconds since Epoch.

(b) Transaction Reports.

(i) Each Member shall, during the time it is open for trading, be responsible for promptly transmitting to the Processor Transaction Reports in Eligible Securities executed in its Market by means set forth in the Processor Services Agreements.

(ii) Transaction Reports shall include:

(A) identification of the Eligible Security, using the Listing Market's symbol;

(B) the number of shares in the transaction;

(C) the price at which the shares were purchased or sold;

(D) the buy/sell/cross indicator;

(E) appropriate timestamps;

(F) the Market of execution; and

(G) through appropriate codes and messages, late or out-of-sequence trades, corrections, and similar matters.

(iii) In addition, Transaction Reports shall include the time of the transaction as identified in the Member's matching engine publication timestamp. However, in the case of FINRA, 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. In addition, if the FINRA trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, then the FINRA trade reporting facility shall also furnish the Processors with the time of the transmission as published on the facility's proprietary feed. The FINRA trade reporting facility shall convert times that its members report to it to nanoseconds and shall furnish such times to the Processors in nanoseconds since Epoch.

(iv) Each Member shall (a) transmit all Transaction Reports in Eligible Securities to the Processors as soon as practicable, but not later than 10 seconds, after the time of execution, (b) establish and maintain collection and reporting procedures and facilities reasonably designed to comply with this requirement, and (c) designate as "late" any last sale price not collected and reported in accordance with the above-referenced procedures or as to which the Member has knowledge that the time interval after the time of execution is significantly greater than the time period referred to above. The Members shall seek to reduce the time period for reporting last sale prices to the Processors as conditions warrant.

(v) The following types of transactions are not required to be reported to the Processors pursuant to this Agreement:

(A) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;

(B) transactions made in reliance on Section 4(a)(2) of the Securities Act of 1933;

(C) transactions in which the buyer and the seller have agreed to trade at a price unrelated to the current market for the security (e.g., to enable the seller to make a gift);

(D) the acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

(E) purchases of securities pursuant to a tender offer;

(F) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market; and

(G) transfers of securities that are expressly excluded from trade reporting under FINRA rules.

(c) The following symbols shall be used to denote the applicable Member:

CODE	**MEMBER**
A	NYSE American LLC
B	Nasdaq BX, Inc.
C	NYSE National, Inc.
D	Financial Industry Regulatory Authority, Inc.
H	MIAX Pearl Exchange, LLC
I	Nasdaq ISE, LLC
J	Cboe EDGA Exchange, Inc.
K	Cboe EDGX Exchange, Inc.
L	Long-Term Stock Exchange Inc.
M	NYSE Chicago, Inc.
N	New York Stock Exchange LLC
P	NYSE Arca, Inc.
Q	The Nasdaq Stock Market LLC
U	MEMX LLC
V	Investors Exchange LLC
W	Cboe Exchange, Inc.
X	Nasdaq PHLX LLC

Y	Cboe BYX Exchange, Inc.
Z	Cboe BZX Exchange, Inc.

(d) Indemnification.

(i) Each Member agrees, severally and not jointly, to indemnify and hold harmless and defend the Company, each other Member, the Processors, the Administrator, the Operating Committee, and each of their respective directors, officers, employees, agents, and Affiliates (each, an "Member Indemnified Party") from and against any and all loss, liability, claim, damage, and expense whatsoever incurred or threatened against such Member Indemnified Party as a result of a system error or disruption at such Member's Market affecting any Transaction Reports, Quotation Information, or other information reported to the Processors by such Member and disseminated by the Processors to Vendors and Subscribers. This indemnity shall be in addition to any liability that the indemnifying Member may otherwise have.

(ii) Promptly after receipt by a Member Indemnified Party of notice of the commencement of any action, such Member Indemnified Party will, if it intends to make a claim in respect thereof against an indemnifying Member, notify the indemnifying Member in writing of the commencement thereof; provided, however, that the failure to so notify the indemnifying Member will only relieve the indemnifying Member from any liability which it may have to any Member Indemnified Party to the extent such indemnifying Member is actually prejudiced by such failure. In case any such action is brought against any Member Indemnified Party and it promptly notifies an indemnifying Member of the commencement thereof, the indemnifying Member will be entitled to participate in, and, to the extent that it elects (jointly with any other indemnifying Member similarly notified), to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Member of its election to assume the defense thereof, the indemnifying Member will not be liable to such Indemnified Party for any legal or other expenses subsequently incurred by such Member Indemnified Party in connection with the defense thereof but the Member Indemnified Party may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Member's control of the defense. If the indemnifying Member has assumed the defense in accordance with the terms hereof, the indemnifying Member may enter into a settlement or consent to any judgment without the prior written consent of the Member Indemnified Party if (i) such settlement or judgment involves monetary damages only, all of which will be fully paid by the indemnifying Member and without admission of fault or culpability on behalf of any Member Indemnified Party, and (ii) a term of the settlement or judgment is that the Person or Persons asserting such claim unconditionally and irrevocably release all Member Indemnified Parties from all liability with respect to such claim; otherwise, the consent of the Member Indemnified Party shall be required in order to enter into any settlement of, or consent to the entry of a judgment with respect to, any claim (which consent shall not be unreasonably withheld, delayed, or conditioned).

Section 5.5 Operational Issues.

(a) Each Member shall be responsible for collecting and validating quotes and last sale reports within its own system prior to transmitting this data to the Processors.

(b) Each Member may utilize a dedicated Member line into the Processors to transmit Transaction Reports and Quotation Information to the Processors.

(c) Whenever a Member determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Transaction Reports or Quotation Information to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Member shall promptly notify the Processors of such condition or event and shall resume collecting and transmitting Transaction Reports and Quotation Information to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Member or its members to transmit Transaction Reports or Quotation Information to the Processors, the Member shall promptly notify the Processors of such event or condition. Upon receiving such notification, the Processors shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

Article VI.
THE ADMINISTRATOR

Section 6.1 General Functions of the Administrator.

Subject to the general direction of the Operating Committee, as more fully set forth in the agreement entered into between the Company and the Administrator (the "Administrative Services Agreement"), the Administrator shall perform administrative functions on behalf of the Company including recordkeeping; administering Vendor and Subscriber contracts; administering Fees, including billing, collection, and auditing of Vendors and Subscribers; administering Distributions; tax functions of the Company; the preparation of the Company's audited financial reports; and support of Company governance.

Section 6.2 Independence of the Administrator

The Administrator may not be owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own PDP. The Administrator may not employ any person who is also employed by a corporate entity that, either directly or via a subsidiary, offers for sale its own PDP.

Section 6.3 Evaluation of the Administrator.

The Administrator's performance of its functions under the Administrative Services Agreement shall be subject to review at any time as determined by an affirmative vote of the Operating Committee pursuant to Section 4.3; provided, however, that a review shall be conducted at least once every two calendar years but not more frequently than once each calendar year (unless the Administrator has materially defaulted in its obligations under the Administrative Services Agreement and such default has not been cured within the applicable cure period set forth in the Administrative Services Agreement, in which event such limitation

shall not apply). The Operating Committee shall appoint a subcommittee or other Persons to conduct the review. The Company shall require the reviewer to provide the Operating Committee with a written report of its findings and to make recommendations (if necessary), including with respect to the continuing operation of the Administrator. The Administrator shall be required to assist and participate in such review. The Operating Committee shall notify the Commission of any recommendations it may approve as a result of the review of the Administrator and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

Section 6.4 Process for Selecting New Administrator.

Prior to the Operative Date, upon the termination or withdrawal of the Administrator, or upon the expiration of the Administrative Services Agreement, the Operating Committee shall establish procedures for selecting a new Administrator (the "Administrator Selection Procedures"). The Operating Committee, as part of the process of establishing Administrator Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Agreement. The Administrator Selection Procedures shall be established by the Operating Committee pursuant to Section 4.3, and shall set forth, at a minimum:

(a) the entity that will:

(i) draft the Operating Committee's request for proposal for bids on a new Administrator;

(ii) assist the Operating Committee in evaluating bids for the new Administrator; and

(iii) otherwise provide assistance and guidance to the Operating Committee in the selection process.

(b) the minimum technical and operational requirements to be fulfilled by the Administrator;

(c) the criteria to be considered in selecting the Administrator; and

(d) the entities (other than Voting Representatives) that are eligible to comment on the selection of the Administrator.

Section 6.5 Interim Administrator(s).

Notwithstanding the provisions of Sections 6.2 and 6.4 of this Agreement, the Operating Committee may select one or more of the current administrators of the CTA Plan, CQ Plan, and UTP Plan to perform the general functions of the Administrator under Section 6.1 of the Plan on an interim basis during the implementation of the Plan, consistent with the timeline set forth in Article XIV of this Agreement ("Interim Administrator(s)").

Article VII.
REGULATORY MATTERS

Section 7.1 Regulatory and Operational Halts.

(a) Operational Halts. A Member shall notify the Processors if it has concerns about its ability to collect and transmit quotes, orders, or last sale prices, or where it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee.

(b) Regulatory Halts.

(i) The Primary Listing Market may declare a Regulatory Halt in trading for any security for which it is the Primary Listing Market:

(A) as provided for in the rules of the Primary Listing Market;

(B) if it determines there is a SIP Outage, Material SIP Latency, or Extraordinary Market Activity; or

(C) in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.

(ii) In making a determination to declare a Regulatory Halt under subparagraph (b)(i), the Primary Listing Market will consider the totality of information available concerning the severity of the issue, its likely duration, and potential impact on Member Firms and other market participants and will make a good-faith determination that the criteria of subparagraph (b)(i) have been satisfied and that a Regulatory Halt is appropriate. The Primary Listing Market will consult, if feasible, with the affected Trading Center(s), the other Members, or the Processors, as applicable, regarding the scope of the issue and what steps are being taken to address the issue. Once a Regulatory Halt under subparagraph (b)(i) has been declared, the Primary Listing Market will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the Primary Listing Market.

(c) Initiating a Regulatory Halt.

(i) The start time of a Regulatory Halt is when the Primary Listing Market declares the halt, regardless of whether an issue with communications impacts the dissemination of the notice.

(ii) If a Processor is unable to disseminate notice of a Regulatory Halt or the Primary Listing Market is not open for trading, the Primary Listing Market will take reasonable steps to provide notice of a Regulatory Halt, which shall include both the type and start time of the Regulatory Halt, by dissemination through:

(A) PDP;

(B) posting on a publicly-available Member website;

(C) system status messages; or

(D) a notification via an alternate Processor, if available.

(iii) Except in exigent circumstances, the Primary Listing Market will not declare a Regulatory Halt retroactive to a time earlier than the notice of such halt.

(iv) Resumption of Trading After Regulatory Halts Other Than SIP Halts. The Primary Listing Market will declare a resumption of trading when it makes a good-faith determination that trading may resume in a fair and orderly manner and in accordance with its rules.

(v) For a Regulatory Halt that is initiated by another Member that is a Primary Listing Market, a Member may resume trading after the Member receives notification from the Primary Listing Market that the Regulatory Halt has been terminated.

(d) Resumption of Trading After SIP Halt.

(i) The Primary Listing Market will determine the SIP Halt Resume Time. In making such determination, the Primary Listing Market will make a good-faith determination and consider the totality of information to determine whether resuming trading would promote a fair and orderly market, including input from the Processors, the other Members, or the operator of the system in question (as well as any Trading Center(s) to which such system is linked), regarding operational readiness to resume trading. The Primary Listing Market retains discretion to delay the SIP Halt Resume Time if it believes trading will not resume in a fair and orderly manner.

(ii) The Primary Listing Market will terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time. The Primary Listing Market shall provide a minimum notice of a SIP Halt Resume Time, as specified by the rules of the Primary Listing Market, during which period market participants may enter quotes and orders in the affected securities. During Regular Trading Hours, the last SIP Halt Resume Time before the end of Regular Trading Hours shall be an amount of time as specified by the rules of the Primary Listing Market. The Primary Listing Market may stagger the SIP Halt Resume Times for multiple symbols in order to reopen in a fair and orderly manner.

(iii) During Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time as specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, a Member may resume trading in that security. Outside Regular Trading Hours, a Member may resume trading immediately after the SIP Halt Resume Time.

(e) Member to Halt Trading During Regulatory Halt. A Member will halt trading for any security traded on its Market if the Primary Listing Market declares a Regulatory Halt for the security.

(f) Communications. Whenever, in the exercise of its regulatory functions, the Primary Listing Market for an Eligible Security determines it is appropriate to initiate a Regulatory Halt, the Primary Listing Market will notify all other Members and the affected Processors of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Members and the Primary Listing Market. The affected Processors shall disseminate to Members notice of the Regulatory Halt (as well as notice of the lifting of a Regulatory Halt) (i) through the CT Feeds or (ii) any other means the affected Processors, in its sole discretion, considers appropriate. Each Member shall be required to continuously monitor these communication protocols established by the Operating Committee and the Processors during market hours, and the failure of a Member to do so shall not prevent the Primary Listing Market from initiating a Regulatory Halt in accordance with the procedures specified herein.

Section 7.2 Hours of Operation of the System.

(a) Quotation Information shall be entered, as applicable, by Members as to all Eligible Securities in which they make a market during Regular Trading Hours on all days the Processors are in operation. Transaction Reports shall be entered for executions that occur from 9:30 a.m. until 4:00:00 p.m. ET by Members as to all Eligible Securities in which they execute transactions during Regular Trading Hours on all days the Processors are in operation.

(b) Members that execute transactions in Eligible Securities outside of Regular Trading Hours, shall report such transactions as follows:

(i) transactions in Eligible Securities executed from 4:00 a.m. up to 9:30:00 a.m. ET (or as otherwise designated by a Member as an execution occurring outside of Regular Trading Hours) and after 4:00:00 p.m. until 8:00 p.m. ET, shall be designated with an appropriate indicator to denote their execution outside normal market hours;

(ii) transactions in Eligible Securities executed after 8:00 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processors between the hours of 4:00 a.m. and 8:00 p.m. ET on the next business day (T+1), and shall be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) transactions in Eligible Securities executed between 12:00 a.m. (midnight) and 4:00 a.m. ET shall be transmitted to the Processors between 4:00 a.m. and 9:30 a.m. ET, on trade date, shall be designated with an appropriate indicator to denote their execution outside normal market hours, and shall be accompanied by the time of execution; and

(iv) transactions reported pursuant to this Section [7.3]7.2 shall be included in the calculation of total trade volume for purposes of determining Net Distributable Operating Revenue, but shall not be included in the calculation of the daily high, low, or last sale.

(c) Late trades shall be reported in accordance with the rules of the Member in whose Market the transaction occurred and can be reported between the hours of 4:00 a.m. and 8:00 p.m. ET.

(d) The Processors shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET, when any Member or FINRA Participant is open for trading, until 8:00 p.m. ET (the "Additional Period"); provided, however, that the National Best Bid and Offer quotation will not be disseminated before 4:00 a.m. or after 8:00 p.m. ET. Members that enter Quotation Information or submit Transaction Reports to the Processors during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

Article VIII.
CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 8.1 Capital Accounts.

(a) A separate capital account ("Capital Account") shall be established by the Company and maintained by the Administrator for each Member in accordance with section 704(b) of the Code and Treasury Regulation section 1.704-1 (b)(2)(iv). There shall be credited to each Member's Capital Account (i) the Capital Contributions (at fair market value in the case of contributed property) made by such Member (which shall be deemed to be zero for the initial Members), (ii) allocations of Company profits and gain (or items thereof) to such Member pursuant to Section 9.2 and (iii) any recaptured tax credits, or portion thereof, to the extent such increase to the tax basis of a Member's interest in the Company may be allowed pursuant to the Code. Each Member's Capital Account shall be decreased by (x) the amount of distributions (at fair market value in the case of property distributed in kind) to such Member, (y) allocations of Company losses to such Member (including expenditures which can neither by capitalized nor deducted for tax purposes, organization and syndication expenses not subject to amortization and loss on sale or disposition of the Company's assets, whether or not disallowed under sections 267 or 707 of the Code) pursuant to Section 9.2 and (z) any tax credits, or portion thereof, as may be required to be charged to the tax basis of a Membership Interest pursuant to the Code. Capital Accounts shall not be adjusted to reflect a Member's share of liabilities under section 752 of the Code.

(b) The fair market value of contributed, distributed, or revalued property shall be agreed to by the Operating Committee or, if there is no such agreement, by an appraisal.

(c) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation section 1.704-1(b) promulgated under section 704(b) of the Code, and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

Section 8.2 Additional Capital Contributions.

Except with the approval of the Operating Committee or as otherwise provided in this Section 8.2, no Member shall be obligated or permitted to make any additional contribution to the capital of the Company. The Members agree to make additional Capital Contributions from time to time as appropriate in respect of reasonable administrative and other reasonable expenses of the Company.

Section 8.3 Distributions.

Except as set forth in this Section 8.3 and Section 11.2, and subject to the provisions of Section 13.1, Distributions shall be made to the Members at the times and in the aggregate amounts set forth in Exhibit D. Notwithstanding any provisions to the contrary contained in this Agreement, the Company shall not make a Distribution to a Member on account of its interest in the Company if such Distribution would violate Section 18-607 of the Delaware Act or other Applicable Law. Distributions may be made in cash or, if determined by the Operating Committee, in-kind. The Operating Committee may reserve amounts for anticipated expenses or contingent liabilities of the Company. In the event that additional Capital Contributions are called for, and any Member fails to provide the full amount of such additional Capital Contributions as set forth in the relevant resolution of the Operating Committee, any Distributions to be made to such defaulting Member shall be reduced by the amount of any required but unpaid Capital Contribution due from such Member.

Article IX.
ALLOCATIONS

Section 9.1 Calculation of Profits and Losses.

To the fullest extent permitted by Applicable Law, the profits and losses of the Company shall be determined for each fiscal year in a manner consistent with GAAP.

Section 9.2 Allocation of Profits and Losses.

(a) Except as otherwise set forth in this Section 9.2, for Capital Account purposes, all items of income, gain, loss, and deduction shall be allocated among the Members in accordance with Exhibit D.

(b) For federal, state and local income tax purposes, items of income, gain, loss, deduction, and credit shall be allocated to the Members in accordance with the allocations of the corresponding items for Capital Account purposes under this Section 9.2, except that items with respect to which there is a difference between tax and book basis will be allocated in accordance with Section 704(c) of the Code, the Treasury Regulations thereunder and Treasury Regulations Section 1.704-1(b)(4)(i).

(c) Notwithstanding any provision set forth in this Section 9.2, no item of deduction or loss shall be allocated to a Member to the extent the allocation would cause a negative balance in such Member's Capital Account (after taking into account the adjustments, allocations and distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)) that exceeds the amount that such Member would be required to reimburse the Company pursuant to this Agreement or Applicable Law.

(d) In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6), items of the Company's income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate as quickly as possible any deficit balance in its Capital Account created by such adjustments, allocations or distributions in excess of that

permitted under Section 9.2(c). Any special allocations of items of income or gain pursuant to this Section 9.2(d) shall be taken into account in computing subsequent allocations pursuant to this Section 9.2 so that the net amount of any items so allocated and all other items allocated to each Member pursuant to this Section 9.2 shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 9.2 if such unexpected adjustments, allocations or distributions had not occurred.

Article X.
RECORDS AND ACCOUNTING; REPORTS

Section 10.1 Accounting.

(a) The Operating Committee shall maintain a system of accounting which enables the Company to produce accounting records and information substantially consistent with GAAP. The Fiscal Year of the Company shall be the calendar year unless Applicable Law requires a different Fiscal Year.

(b) All matters concerning accounting procedures shall be determined by the Operating Committee.

Section 10.2 Tax Status; Returns.

(a) It is the intent of this Company and the Members that this Company shall be treated as a partnership for federal, state and local income tax purposes. Neither the Company nor any Member shall make an election for the Company to be classified as other than a partnership pursuant to Treasury Regulations Section 301.7701-3 or otherwise.

(b) The Company shall cause federal, state, and local income tax returns for the Company to be prepared and timely filed with the appropriate authorities and shall arrange for the timely delivery to the Members of such information as is necessary for such Members to prepare their federal, state and local tax returns. All tax returns shall be prepared in a manner consistent with the Distributions made in accordance with Exhibit D.

Section 10.3 Partnership Representative.

(a) The Operating Committee shall appoint an entity as the "Partnership Representative" of the Company for purposes of Section 6223 of the Code and the Treasury Regulations promulgated thereunder, and all federal, state, and local Tax audits and litigation shall be conducted under the direction of the Partnership Representative.

(b) The Partnership Representative shall use reasonable efforts to inform each Member of all significant matters that may come to its attention by giving notice thereof and to forward to each Member copies of all significant written communications it may receive in such capacity. The Partnership Representative shall consult with the Members before taking any material actions with respect to tax matters, including actions relating to (i) an IRS examination of the Company commenced under Section 6231(a) of the Code, (ii) a request for administrative adjustment filed by the Company under Section 6227 of the Code, (iii) the filing of a petition for readjustment under Section 6234 of the Code with respect to a final notice of partnership

adjustment, (iv) the appeal of an adverse judicial decision, and (v) the compromise, settlement, or dismissal of any such proceedings.

(c) The Partnership Representative shall not compromise or settle any tax audit or litigation affecting the Members without the approval of a majority of Members. Any material proposed action, inaction, or election to be taken by the Partnership Representative, including the election under Section 6226(a)(1) of the Code, shall require the prior approval of a majority of Members.

Article XI.
DISSOLUTION AND TERMINATION

Section 11.1 Dissolution of Company.

The Company shall dissolve, and its assets and business shall be wound up, upon the occurrence of any of the following events:

(a) Unanimous written consent of the Members to dissolve the Company;

(b) The sale or other disposition of all or substantially all the Company's assets outside the ordinary course of business;

(c) An event which makes it unlawful or impossible for the Company business to be continued;

(d) The withdrawal of one or more Members such that there is only one remaining Member; or

(e) The entry of a decree of judicial dissolution under § 18-802 of the Delaware Act.

Section 11.2 Liquidation and Distribution.

Following the occurrence of an event described in Section 11.1, the Members shall appoint a liquidating trustee who shall wind up the affairs of the Company by (i) selling its assets in an orderly manner (so as to avoid the loss normally associated with forced sales), and (ii) applying and distributing the proceeds of such sale, together with other funds held by the Company: (a) first, to the payment of all debts and liabilities of the Company; (b) second, to the establishments of any reserves reasonably necessary to provide for any contingent recourse liabilities and obligations; (c) third, to the Members in accordance with Exhibit D; and (d) fourth, to the Members as determined by a majority of Members.

Section 11.3 Termination.

Each of the Members shall be furnished with a statement prepared by the independent accountants retained on behalf of the Company, which shall set forth the assets and liabilities of the Company as of the date of the final distribution of Company's assets under Section 11.2 and the net profit or net loss for the fiscal period ending on such date. Upon compliance with the distribution plan set forth in Section 11.2, the Members shall cease to be such, and the liquidating trustee shall execute, acknowledge, and cause to be filed a certificate of cancellation of the

Company. Upon completion of the dissolution, winding up, liquidation, and distribution of the liquidation proceeds, the Company shall terminate.

Article XII.
EXCULPATION AND INDEMNIFICATION

Section 12.1 Exculpation.

Each Member, by and for itself, each of its Affiliates and each of its and their respective equity holders, directors, officers, controlling persons, partners, employees, successors and assigns, hereby acknowledges and agrees that it is the intent of the Company and each Member that the liability of each Member and each individual currently or formerly serving as a[n SRO] Voting Representative (each, an "Exculpated Party") be limited to the maximum extent permitted by Applicable Law or as otherwise expressly provided herein. In accordance with the foregoing, the Members hereby acknowledge and agree that:

(a) To the maximum extent permitted by Applicable Law or as otherwise expressly provided herein, no present or former Exculpated Party or any of such Exculpated Party's Affiliates, heirs, successors, assigns, agents or representatives shall be liable to the Company or any Member for any loss suffered in connection with a breach of any fiduciary duty, errors in judgment or other acts or omissions by such Exculpated Party; provided, however, that this provision shall not eliminate or limit the liability of such Exculpated Party for (i) acts or omissions which involve gross negligence, willful misconduct or a knowing violation of law, or (ii) as provided in Section 5.4(d) hereof, losses resulting from such Exculpated Party's Transaction Reports, Quotation Information or other information reported to the Processors by such Exculpated Party (collectively "Non-Exculpated Items"). Any Exculpated Party may consult with counsel and accountants in respect of Company affairs, and provided such Person acts in good faith reliance upon the advice or opinion of such counsel or accountants, such Person shall not be liable for any loss suffered in reliance thereon.

(b) Notwithstanding anything to the contrary contained herein, whenever in this Agreement or any other agreement contemplated herein or otherwise, an Exculpated Party is permitted or required to take any action or to make a decision in its "sole discretion" or "discretion" or that it deems "necessary," or "necessary or appropriate" or under a grant of similar authority or latitude, the Exculpated Party may, insofar as Applicable Law permits, make such decision in its sole discretion (regardless of whether there is a reference to "sole discretion" or "discretion"). The Exculpated Party (i) shall be entitled to consider such interests and factors as it desires (including its own interests), (ii) shall have no duty or obligation (fiduciary or otherwise) to give any consideration to any interest of or factors affecting the Company or the Members, and (iii) shall not be subject to any other or different standards imposed by this Agreement, or any other agreement contemplated hereby, under any Applicable Law or in equity.

Section 12.2 Right to Indemnification.

(a) Subject to the limitations and conditions provided in this Article XII and to the fullest extent permitted by Applicable Law, the Company shall indemnify each Company

Indemnified Party for Losses as a result of the Company Indemnified Party being a Party to a Proceeding. Notwithstanding the foregoing, no such indemnification shall be available in the event the Company is a claimant against the Company Indemnified Party.

(b) Indemnification under this Article XII shall continue as to a Company Indemnified Party who has ceased to serve in the capacity that initially entitled such Company Indemnified Party to indemnity hereunder; provided, however, that the Company shall not be obligated to indemnify a Company Indemnified Party for the Company Indemnified Party's Non-Exculpated Items.

(c) The rights granted pursuant to this Article XII shall be deemed contract rights, and no amendment, modification, or repeal of this Article XII shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any amendment, modification, or repeal. It is expressly acknowledged that the indemnification provided in this Article XII could involve indemnification for negligence or under theories of strict liability.

(d) The Company shall be the primary obligor in respect of any Company Indemnified Party's claim for indemnification, for advancement of expenses, or for providing insurance, subject to this Article XII. The obligation, if any, of any Member or its Affiliates to indemnify, to advance expenses to, or provide insurance for any Company Indemnified Party shall be secondary to the obligations of the Company under this Article XII (and the Company's insurance providers shall have no right to contribution or subrogation with respect to the insurance plans of such Member or its Affiliates).

Section 12.3 Advance Payment.

Reasonable expenses incurred by a Company Indemnified Party who is a named defendant or respondent to a Proceeding shall be paid by the Company in advance of the final disposition of the Proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Party to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company.

Section 12.4 Appearance as a Witness.

Notwithstanding any other provision of this Article XII, the Company shall pay or reimburse reasonable out-of-pocket expenses incurred by a Company Indemnified Party in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

Section 12.5 Nonexclusivity of Rights.

The right to indemnification and the advancement and payment of expenses conferred in this Article XII shall not be exclusive of any other right which any Company Indemnified Person may have or hereafter acquire under any law (common or statutory), provision of the Certificate or this Agreement or otherwise.

Article XIII.
MISCELLANEOUS

Section 13.1 Expenses.

The Company shall pay all current expenses, including any Taxes payable by the Company, whether for its own account or otherwise required by law (including any costs of complying with applicable tax obligations), third-party service provider fees, and all administrative and processing expenses and fees, as well as any other amounts owing to the Processors under the Processor Services Agreements, to the Administrator under the Administrative Services Agreement, or to the Processors, Administrator, or FINRA under Exhibit D to this Agreement, before any allocations may be made to the Members. Appropriate reserves, as unanimously determined by the Members, may be charged to the Capital Account of the Members for (i) contingent liabilities, if any, as of the date any such contingent liabilities become known to the Operating Committee, or (ii) amounts needed to pay the Company's operating expenses, including administrative and processing expenses and fees, before any allocations are made to the Member. Each Member shall bear the cost of implementation of any technical enhancements to the System made at its request and solely for its use, subject to reapportionment should any other Member subsequently make use of the enhancement, or the development thereof.

Section 13.2 Entire Agreement.

Upon the Operative Date, this Agreement supersedes the CQ Plan, the CTA Plan, and the UTP Plan and all other prior agreements among the Members with respect to the subject matter hereof. This instrument contains the entire agreement with respect to such subject matter.

Section 13.3 Notices and Addresses.

Unless otherwise specified herein, all notices, consents, approvals, reports, designations, requests, waivers, elections, and other communications (collectively, "Notices") authorized or required to be given pursuant to this Agreement shall be in writing and may be delivered by certified or registered mail, postage prepaid, by hand, by any private overnight courier service, or notification through the Company's web portal. Such Notices shall be mailed or delivered to the Members at the addresses set forth on Exhibit A or such other address as a Member may notify the other Members of in writing. Any Notices to be sent to the Company shall be delivered to the principal place of business of the Company or at such other address as the Operating Committee may specify in a notice sent to all of the Members. Notices shall be effective (i) if mailed, on the date three days after the date of mailing, (ii) if hand delivered or delivered by private courier, on the date of delivery, or (iii) if sent by through the Company's web portal, on the date sent; provided, however, that notices of a change of address shall be effective only upon receipt.

Section 13.4 Governing Law.

This Agreement shall be governed by and construed in accordance with the Delaware Act and internal laws and decisions of the State of Delaware, without regard to the conflicts of laws principles thereof; provided, however, that the rights and obligations of the Members, the Processors and the Administrator, and of Vendors, Subscribers, and other Persons contracting

with the Company in respect of the matters covered by this Agreement, shall at all times also be subject to any applicable provisions of the Exchange Act and any rules and regulations promulgated thereunder. For the avoidance of doubt, nothing in this Agreement waives any protection or limitation of liability afforded any of the Members or any of their Affiliates by common law, including the doctrines of self-regulatory organization immunity and federal preemption.

Section 13.5 Amendments.

(a) Except as this Agreement otherwise provides, this Agreement may be modified from time to time when authorized by the Operating Committee pursuant to Section 4.3, subject to the approval of the Commission or when such modification otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

(b) In the case of a Ministerial Amendment, the Chair of the Company's Operating Committee may modify this Agreement by submitting to the Commission an appropriate amendment that sets forth the modification; provided, however, that 48-hours advance notice of the amendment to the Operating Committee in writing is required. Such an amendment shall become effective upon filing with the Commission in accordance with Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

(c) "Ministerial Amendment" means an amendment to this Agreement that pertains solely to any one or more of the following:

(i) admitting a new Member to the Company;

(ii) changing the name or address of a Member;

(iii) incorporating a change that the Commission has implemented by rule and that requires no conforming language to the text of this Agreement;

(iv) incorporating a change (A) that the Commission has implemented by rule, (B) that requires conforming language to the text of this Agreement, and (C) whose conforming language to the text of this Agreement has been approved by the affirmative vote of the Operating Committee pursuant to Section 4.3;

(v) incorporating a change (A) that a Governmental Authority requires relating to the governance or operation of an LLC, (B) that requires conforming language to the text of this Agreement, and (C) whose conforming language to the text of this Agreement has been approved by the affirmative vote of the Operating Committee pursuant to Section 4.3[or upon approval by a majority of Members pursuant to Section 13.5(b), as applicable]; or

(vi) incorporating a purely technical change, such as correcting an error or an inaccurate reference to a statutory provision, or removing language that has become obsolete.

Section 13.6 Successors.

This Agreement shall be binding upon and inure to the benefit of the Members and their respective legal representatives and successors.

Section 13.7 Limitation on Rights of Others.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company. Furthermore, except as provided in Section 3.7(b), the Members shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement. Nothing in this Agreement shall be deemed to create any legal or equitable right, remedy or claim in any Person not a party hereto (other than any Person indemnified under Article XII).

Section 13.8 Counterparts.

This Agreement may be executed by the Members in any number of counterparts, no one of which need contain the signature of all Members. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

Section 13.9 Headings.

The section and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of any provisions of this Agreement.

Section 13.10 Validity and Severability.

If any provision of this Agreement shall be held invalid or unenforceable, that shall not affect the validity or enforceability of any other provisions of this Agreement, all of which shall remain in full force and effect.

Section 13.11 Statutory References.

Each reference in this Agreement to a particular statute or regulation, or a provision thereof, shall be deemed to refer to such statute or regulation, or provision thereof, or to any similar or superseding statute or regulation, or provision thereof, as is from time to time in effect.

Section 13.12 Modifications to be in Writing.

This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof, and no amendment, modification or alteration shall be binding unless the same is in writing and adopted in accordance with the provisions of Section 13.5.

Article XIV.
IMPLEMENTATION

Section 14.1 Implementation Timeline

[The steps to implement the Plan and timelines for completing these various steps are set forth in Exhibit F. The timeline shall begin when the Plan is approved by the Commission, and such approval is published on the Commission's website. The steps to implement the Plan have been organized into multiple workstreams, some of which can be performed in parallel, and others have dependencies that need to be completed before they can begin. In the Exhibit F, the Company has identified such dependencies, some of which are outside the control of the Operating Committee. In the event a workstream listed in Exhibit F takes shorter or, due to factors outside the Operating Committee's reasonable control, takes longer than expected, the timelines for contingent steps shall be adjusted accordingly to account for such change. Any lengthening of the timeline must be made by an affirmative vote of the Operating Committee pursuant to Section 4.3(b) and must be based on a reasonable determination that the timeline needs to be extended. In such instances, the Operating Committee will include the adjustment in its written progress report to the Commission in accordance with Section 14.2.]

(a) No later than one month after the Effective Date, the Voting Representatives shall be determined pursuant to Section 4.2 of this Agreement.

(b) No later than three months after the Effective Date, the Voting Representatives shall select the members of the Advisory Committee.

(c) No later than 12 months after the Effective Date, the Operating Committee shall file with the Commission proposed Fees charged to Vendors and Subscribers for Transaction Reports and Quotation Information in Eligible Securities.

(d) No later than 30 months after the Effective Date, or no later than 90 days after the Commission has approved Fees charged to Vendors and Subscribers for Transaction Reports and Quotation Information in Eligible Securities, whichever date is later, the Plan shall conduct the Processor and Administrator functions related to the public dissemination of real-time consolidated Transaction Reports and Quotation Information for Eligible Securities.

(e) No later than 30 months after the Effective Date, the entity performing the role of Administrator of the Plan shall meet the requirements of Section 6.2 of this Agreement and shall have been selected pursuant to the process in Section 6.4 of this Agreement.

Section 14.2 Written Progress Reports to Commission

(a) Beginning three months after the formation of the Operating Committee and continuing every three months until the Operative Date, the Operating Committee will provide written progress reports to the Commission every three months.

(b) The written progress reports will contain the actions undertaken to date by the Operating Committee and a detailed description of the progress made toward completing each of the steps [listed in Exhibit F]required to implement the Plan. The Operating Committee will

promptly make such progress reports available on the CQ Plan and CTA Plan's and UTP Plan's websites until such time as[, and on] the Plan's website becomes available[, when available after the selection of the Administrator].

Section 14.3 Transition from CQ Plan, CTA Plan, and UTP Plan

(a) Until the Operative Date, the Members will continue to operate pursuant to the CQ Plan, CTA Plan, and UTP Plan with respect to the public dissemination of real-time consolidated equity market data for Eligible Securities rather than this Agreement.

(b) As of the Operative Date, the Members shall conduct, through the Company, the Processor and Administrator functions related to the public dissemination of real-time consolidated equity market data for Eligible Securities required by the Commission to be performed by the Members under the Exchange Act and the rules and regulations thereunder. The Members shall file an amendment to the CQ Plan, CTA Plan, and UTP Plan to cease their operation as of the Operative Date.

IN WITNESS WHEREOF, the undersigned Members have executed this Agreement as of the day and year first above written.

EXHIBIT A

Members of CT Plan LLC

Member Name and Address
Cboe BYX Exchange, Inc. 400 South LaSalle Street Chicago, Illinois 60605
Cboe BZX Exchange, Inc. 400 South LaSalle Street Chicago, Illinois 60605
Cboe EDGA Exchange, Inc. 400 South LaSalle Street Chicago, Illinois 60605
Cboe EDGX Exchange, Inc. 400 South LaSalle Street Chicago, Illinois 60605
Cboe Exchange, Inc. 400 South LaSalle Street Chicago, Illinois 60605
Financial Industry Regulatory Authority, Inc. 1700 K Street, N.W. Washington, D.C. 20006
Investors Exchange LLC 3 World Trade Center 58th Floor New York, New York 10007
Long-Term Stock Exchange, Inc. 101 Greenwich Street, 15th Floor New York, New York 10014
MEMX LLC 382 NE 191st Street, Suite 92178 Miami, FL 33179
MIAX PEARL, LLC 7 Roszel Road, Suite 1A Princeton, New Jersey 08540

Member Name and Address
Nasdaq BX, Inc. One Liberty Plaza 165 Broadway New York, New York 10006
Nasdaq ISE, LLC One Liberty Plaza 165 Broadway New York, New York 10006
Nasdaq PHLX LLC FMC Tower, Level 8 2929 Walnut Street Philadelphia, Pennsylvania 19104
The Nasdaq Stock Market LLC One Liberty Plaza 165 Broadway New York, NY 10006
New York Stock Exchange LLC 11 Wall Street New York, New York 10005
NYSE American LLC 11 Wall Street New York, New York 10005
NYSE Arca, Inc. 11 Wall Street New York, New York 10005
NYSE Chicago, Inc. 11 Wall Street New York, New York 10005
NYSE National, Inc. 11 Wall Street New York, NY 10005

EXHIBIT B

Disclosures

(a) The Members must respond to the following questions and instructions:

(i) Is the Member for profit or not-for-profit? If the Member is for profit, is it publicly or privately owned? If privately owned, list any owner with an interest of 5% or more of the Member, where to the Member's knowledge, such owner, or any affiliate controlling, controlled by, or under common control with the owner, subscribes, directly or through a third-party vendor, to CT Feeds and/or Member PDP.

(ii) Does the Member offer PDP? If yes, list each product, describe its content, and provide a link to where fees for each product are disclosed.

(iii) Provide the names of the Voting Representative, any alternate Voting Representatives designated by the Member, and any Member Observers. Also provide a narrative description of such persons' roles within the Member organization, including the title of each individual as well as any direct responsibilities related to the development, dissemination, sales, or marketing of the Member's PDP, and the nature of those responsibilities sufficient for the public to identify the nature of any potential conflict of interest that could be perceived by a reasonable objective observer as having an effect on the operation of the Company. If such persons work in or with the Member's PDP business, describe such persons' roles and describe how that business and such persons' Company responsibilities impacts their compensation. In addition, describe how such persons' responsibilities with the PDP business may present a conflict of interest with their responsibilities to the Company.

(iv) Does the Member, its Voting Representative, its alternate Voting Representative, or its Member Observers or any affiliate have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with their responsibilities to the Company? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(b) The Processors must respond to the following questions and instructions:

(i) Is the Processor an affiliate of or affiliated with any Member? If yes, disclose the Member(s) and describe the nature of the affiliation. Include an entity-level organizational chart depicting the Processor and its affiliates.

(ii) Provide a narrative description of the functions directly performed by senior staff, the manager employed by the Processor to provide Processor services to the Company, and the staff that reports to that manager.

(iii) Does the Processor provide any services for any Member's PDP, other NMS Plans, or creation of consolidated equity data information for its own use? If Yes, disclose the services the Processor performs and identify which NMS Plans. Does the

Processor have any profit or loss responsibility for a Member's PDP or any other professional involvement with persons the Processor knows are engaged in a Member's PDP business? If so, describe.

(iv) List the policies and procedures established to safeguard Restricted Information, Highly Confidential Information, and Confidential Information that is applicable to the Processor.

(v) Does the Processor, or its representatives, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with the representatives' responsibilities to the Company? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(c) The Administrator must respond to the following questions and instructions:

(i) Provide a narrative description of the functions directly performed by senior staff, the administrative services manager, and the staff that reports to that manager.

(ii) Does the Administrator provide any services for any Member's PDP? If yes, what services? Does the Administrator have any profit or loss responsibility, or licensing responsibility, for a Member's PDP or any other professional involvement with persons the Administrator knows are engaged in the Member's PDP business? If so, describe.

(iii) List the policies and procedures established to safeguard Restricted Information, Highly Confidential Information, and Confidential Information that is applicable to the Administrator.

(iv) Does the Administrator, or its representatives, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with the representatives' responsibilities to the Company? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(d) The members of the Advisory Committee must respond to the following questions and instructions:

(i) Provide the member of the Advisory Committee's title and a brief description of the member of the Advisory Committee's role within the firm as well as any direct responsibilities related to the procurement of PDP or CT Feeds or the development, dissemination, sales, or marketing of PDP, and the nature of those responsibilities sufficient for the public to identify the nature of any potential conflict of interest that could be perceived by a reasonable objective observer as having an effect on the operation of the Company. If such representatives work in or with their employer's market data business, describe such member of the Advisory Committee's roles and

describe how that business impacts their compensation. In addition, describe how such representatives' responsibilities with the market data business may present a conflict of interest with their responsibilities to the Company.

(ii) Does the member of the Advisory Committee have responsibilities related to the firm's use or procurement of market data?

(iii) Does the member of the Advisory Committee have responsibilities related to the firm's trading or brokerage services?

(iv) Does the member of the Advisory Committee's firm use the CT Feeds? Does the member of the Advisory Committee's firm use a Member's PDP?

(v) Does the member of the Advisory Committee's firm offer PDP? If yes, list each product, described its content, and provide information about the fees for each product.

(vi) Does the member of the Advisory Committee's firm have an ownership interest of 5% or more in one or more Members? If yes, list the Member(s).

(vii) Does the member of the Advisory Committee actively participate in any litigation against the CQ Plan, CTA Plan, UTP Plan, or the Company?

(viii) Does the member of the Advisory Committee or the member of the Advisory Committee's firm have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with their responsibilities to the Company. If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(e) Each service provider or subcontractor that has agreed in writing to provide required disclosures and be treated as a Disclosing Party shall respond to the following questions and instructions:

(i) Is the service provider or subcontractor affiliated with a Member, Processor, Administrator, or employer of a member of the Advisory Committee? If yes, disclose with whom the person is affiliated and describe the nature of the affiliation.

(ii) If the service provider's or subcontractor's compensation is on a commission basis or is tied to specific metrics, provide a detailed narrative summary of how compensation is determined for performing work on behalf of the Company.

(iii) Is the service provider or subcontractor subject to policies and procedures (including information barriers) concerning the protection of confidential information that includes affiliates? If so, describe. If not, explain their absence.

(iv) Does the service provider or subcontractor, or its representative, have additional relationships or material economic interests that could be perceived by a

reasonable objective observer to present a potential conflict of interest with its responsibilities to the Company? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Company.

(f) The responses to these questions will be posted on the Company's website. If a Disclosing Party has any material changes in its responses, the Disclosing Party must promptly update its disclosures. Additionally, the Disclosing Parties must update the disclosures on an annual basis to reflect any changes. This annual update must be made before the first quarterly session meeting of each calendar year, which is generally held in mid-February.

EXHIBIT C

Confidentiality Policy

(a) Purpose and Scope.

(i) The purpose of this Confidentiality Policy is to provide guidance to the Operating Committee, and all subcommittees thereof, regarding the confidentiality of any data or information (in physical or electronic form) generated by, accessed by, or transmitted to the Operating Committee or any subcommittee, as well as discussions occurring at a meeting of the Operating Committee or any subcommittee.

(ii) This Policy applies to all Covered Persons. All Covered Persons must adhere to the principles set out in this Policy and all Covered Persons that are natural persons may not receive Company data and information until they affirm in writing that they have read this Policy and undertake to abide by its terms.

(iii) Covered Persons may not disclose Restricted, Highly Confidential, or Confidential information except as consistent with this Policy and directed by the Operating Committee.

(iv) The Administrator and Processors will establish written confidential information policies that provide for the protection of information under their control and the control of their Agents, including policies and procedures that provide systemic controls for classifying, declassifying, redacting, aggregating, anonymizing, and safeguarding information, that is in addition to, and not less than, the protection afforded herein. Such policies will be reviewed and approved by the Operating Committee pursuant to Section 4.3, publicly posted, and made available to the Operating Committee for review and approval every two years thereafter or when changes are made, whichever is sooner.

(v) Information will be classified solely based on its content.

(b) Procedures.

(i) General

(A) The Administrator and Processors will be the custodians of all documents discussed by the Operating Committee and will be responsible for maintaining the classification of such documents pursuant to this Policy.

(B) The Administrator may, under delegated authority, designate documents as Restricted, Highly Confidential, or Confidential, which will be determinative unless altered by an affirmative vote of the Operating Committee pursuant to Section 4.3.

(C) The Administrator will ensure that all Restricted, Highly Confidential, or Confidential documents are properly labeled and, if applicable, electronically safeguarded.

(D) All contracts between the Company and its Agents shall require Company information to be treated as Confidential Information that may not be disclosed to third parties, except as necessary to effect the terms of the contract or as required by law, and shall incorporate the terms of this Policy, or terms that are substantially equivalent or more restrictive, into the contract.

(ii) Procedures Concerning Restricted Information.

(A) Disclosure of Restricted Information

(1) Except as provided below, Covered Persons in possession of Restricted Information are prohibited from disclosing it to others.

(2) Covered Persons in possession of Restricted Information are prohibited from disclosing it to others, including Agents, except where authorized to do so by the Operating Committee. Any authorization to disclose Restricted Information must specify the information to be disclosed and identify the Covered Persons or third party authorized to receive the Restricted Information, and such disclosure must be in furtherance of the interests of the plan. Any authorization must be granted on a case-by-case basis, unless the Operating Committee grants standing approval to allow disclosure of specified recurring information to identified Covered Persons. Any Covered Person or third party receiving or having access to Restricted Information pursuant to this subparagraph must segregate such information, retain it in confidence, and use it only in a manner consistent with the terms of this Policy.

(3) Covered Persons may disclose Restricted Information to the staff of the SEC or as otherwise required by Applicable Law, or to other Covered Persons as expressly provided for by this Policy.

(B) If the Administrator determines that it is appropriate to share a customer's financial information with the Operating Committee or a subcommittee thereof, the Administrator will first anonymize the information by redacting the customer's name and any other information that may lead to the identification of the customer.

(C) The Administrator may disclose the identity of a customer that is the subject of Restricted Information in Executive Session only if the Administrator determines in good faith that it is necessary to disclose the customer's identity in order to obtain input or feedback from the Operating Committee or a subcommittee thereof about a matter of importance to the Company. In such an event, the Administrator will change the designation of the information at issue from "Restricted Information" to "Highly Confidential

Information," and its use will be governed by the procedures for Highly Confidential Information in subparagraph (iii) below.

(iii) Procedures Concerning Highly Confidential Information

(A) Disclosure of Highly Confidential Information:

(1) Highly Confidential Information may be disclosed in Executive Session of the Operating Committee or to the subcommittee established pursuant to Section [4.7(c)]4.8(d). Covered Persons in possession of Highly Confidential Information are prohibited from disclosing it to others, including Agents, except as provided below. This prohibition does not apply to disclosures to the staff of the SEC[or as otherwise required by law (such as those required to receive the information to ensure the Member complies with its regulatory obligations)].

(2) A[n SRO] Voting Representative may disclose certain Highly Confidential Information to officers or employees of a Member who have direct or supervisory responsibility for the Member's participation in the Plan, or with agents for the Member supporting the Member's participation in the Plan, provided that such information may not be used in the procurement for, or development, modeling, pricing, licensing, or sale of, PDP. The types of Highly Confidential Information permitted to be shared under this subparagraph shall consist of (i) the Plan's contract negotiations with the Processor(s) or Administrator; (ii) communications with, and work product of, counsel to the Plan; and (iii) information concerning personnel matters that affect the employees of the Member or of the Plan. Any Covered Person receiving or having access to [Restricted Information]Highly Confidential Information pursuant to this subparagraph must segregate such information, retain it in confidence, and use it only in a manner consistent with the terms of this Policy. Any [SRO]Voting Representative who discloses Highly Confidential Information pursuant to this subparagraph shall maintain a log documenting each instance of such disclosure, including the information shared, the persons receiving the information, and the date the information was shared.

(3) Highly Confidential Information may be disclosed to the staff of the SEC, unless it is protected by the Attorney-Client Privilege or the Work Product Doctrine. Any disclosure of Highly Confidential Information to the staff of the SEC will be accompanied by a FOIA Confidential Treatment request.

(4) Highly Confidential Information may be disclosed, as required by Applicable Law.

(5) The Operating Committee may authorize the disclosure of specified Highly Confidential Information to identified third parties that are acting as Agents. Any authorization must be granted on a case-by-case basis, unless the Operating Committee grants standing approval to allow disclosure of specified recurring information to identified third parties[Covered Persons]. Any [Covered Person or]third party receiving or having access to Highly Confidential Information pursuant to this subparagraph must segregate such information, retain it in confidence, and use it only in a manner consistent with the terms of this Policy.

[(5)](6) Apart from the foregoing, the Operating Committee has no power to authorize any other disclosure of Highly Confidential Information.

(B) In the event that a Covered Person is determined by an affirmative vote of the Operating Committee pursuant to this Policy to have disclosed Highly Confidential Information, the Operating Committee will determine the appropriate remedy for the breach based on the facts and circumstances of the event. For a[n SRO] Voting Representative or Member Observer, remedies include a letter of complaint submitted to the SEC, which may be made public by the Operating Committee. For a member of the Advisory Committee, remedies include removal of that member of the Advisory Committee.

(iv) Procedures Concerning Confidential Information

(A) Confidential Information may be disclosed during a meeting of the Operating Committee or any subcommittee thereof. Additionally, a Covered Person may disclose Confidential Information to other persons who need to receive such information to fulfill their responsibilities to the Plan, including oversight of the Plan. The recipient must segregate the information, retain it in confidence, and use it only in a manner consistent with the terms of this policy. A Covered Person also may disclose Confidential Information to the staff of the SEC, as authorized by the Operating Committee as described below, or as may be otherwise required by [law]Applicable Law.

(B) The Operating Committee may authorize the disclosure of Confidential Information by an affirmative vote of the Operating Committee pursuant to Section 4.3. Any authorization must be granted on a case-by-case basis, unless the Operating Committee grants standing approval to allow disclosure of specified recurring information to identified Covered Persons. Any Covered Person or third party receiving or having access to Confidential Information pursuant to this subparagraph must segregate such information, retain it in confidence, and use it only in a manner consistent with the terms of this Policy. Notwithstanding the foregoing, the Operating Committee will not authorize the disclosure of Confidential Information that is generated by a Member or member of the Advisory Committee and designated by such Member

or member of the Advisory Committee as Confidential, unless such Member or member of the Advisory Committee consents to the disclosure.

(C) Members of the Advisory Committee may be authorized by the Operating Committee to disclose particular Confidential Information only in furtherance of the interests of the Company, to enable them to consult with industry representatives or technical experts, provided that the members of the Advisory Committee take any steps requested by the Operating Committee to prevent further dissemination of that Confidential Information, including providing the individual(s) consulted with a copy of this Policy and requesting that person to maintain the confidentiality of such information in a manner consistent with this policy.

(D) A Covered Person that is a representative of a Member may be authorized by the Operating Committee to disclose particular Confidential Information to other employees or agents of the Member or its affiliates only in furtherance of the interests of the Company as needed for such Covered Person to perform his or her function on behalf of the Company. A copy of this Policy will be made available to recipients of such information who are employees or agents of a Member or its affiliates that are not Covered Persons, who will be required to abide by this Confidentiality Policy.

(E) A Covered Person may disclose their own individual views and statements that may otherwise be considered Confidential Information without obtaining authorization of the Operating Committee, provided that in so disclosing, the Covered Person is not disclosing the views or statements of any other Covered Person or Member that are considered Confidential Information.

(F) A person that has reason to believe that Confidential Information has been disclosed by another without the authorization of the Operating Committee or otherwise in a manner inconsistent with this Policy may report such potential unauthorized disclosure to the Chair of the Operating Committee. In addition, a Covered Person that discloses Confidential Information without the authorization of the Operating Committee will report such disclosure to the Chair of the Operating Committee. Such self-reported unauthorized disclosure of Confidential Information will be recorded in the minutes of the meeting of the Operating Committee and will contain: (a) the name(s) of the person(s) who disclosed such Confidential Information, and (b) a description of the Confidential Information disclosed. The name(s) of the person(s) who disclosed such Confidential Information will also be recorded in any publicly available summaries of Operating Committee minutes.

EXHIBIT D

Distributions

Cost Allocation and Revenue Sharing

(a) **Payments**. In accordance with Paragraph (l) of this Exhibit D, each Member will receive an annual payment (if any) for each calendar year that is equal to the sum of the Member's Trading Shares and Quoting Shares (each as defined below), in each Eligible Security for such calendar year. In the event that total Net Distributable Operating Income (as defined below) is negative for a given calendar year, each Member will receive an annual bill for such calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to the Members. Unless otherwise stated in this agreement, a year shall run from January 1st to December 31st and quarters shall end on March 31st, June 30th, September 30th, and December 31st. The Company shall cause the Administrator to provide the Members with written estimates of each Member's percentage of total volume within five business days of the end of each calendar month.

(b) **Security Income Allocation**. The "Security Income Allocation" for an Eligible Security shall be determined by multiplying (i) the Net Distributable Operating Income under this Agreement for the calendar year by (ii) the Volume Percentage for such Eligible Security (the "Initial Allocation"), and then adding or subtracting any amounts specified in the reallocation set forth below.

(c) **Volume Percentage**. The "Volume Percentage" for an Eligible Security shall be determined by dividing (A) the square root of the dollar volume of Transaction Reports disseminated by the Processors in such Eligible Security during the calendar year by (B) the sum of the square roots of the dollar volume of Transaction Reports disseminated by the Processors in each Eligible Security during the calendar year.

(d) **Cap on Net Distributable Operating Income**. If the Initial Allocation of Net Distributable Operating Income in accordance with the Volume Percentage of an Eligible Security equals an amount greater than $4.00 multiplied by the total number of qualified Transaction Reports in such Eligible Security during the calendar year, the excess amount shall be subtracted from the Initial Allocation for such Eligible Security and reallocated among all Eligible Securities in direct proportion to the dollar volume of Transaction Reports disseminated by the Processors in Eligible Securities during the calendar year. A Transaction Report with a dollar volume of $5,000 or more shall constitute one qualified Transaction Report. A Transaction Report with a dollar volume of less than $5,000 shall constitute a fraction of a qualified Transaction Report that equals the dollar volume of the Transaction Report divided by $5,000.

(e) **Trading Share**. The "Trading Share" of a Member in an Eligible Security shall be determined by multiplying (i) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (ii) the Member's Trade Rating in the Eligible Security.

(f) **Trade Rating**. A Member's "Trade Rating" in an Eligible Security shall be determined by taking the average of (A) the Member's percentage of the total dollar volume of Transaction Reports disseminated by the Processors in the Eligible Security during the calendar

year, and (B) the Member's percentage of the total number of qualified Transaction Reports disseminated by the Processors in the Eligible Security during the calendar year.

(g) **Quoting Share**. The "Quoting Share" of a Member in an Eligible Security shall be determined by multiplying (A) an amount equal to fifty percent of the Security Income Allocation for the Eligible Security by (B) the Member's Quote Rating in the Eligible Security.

(h) **Quote Rating**. A Member's "Quote Rating" in an Eligible Security shall be determined by dividing (A) the sum of the Quote Credits earned by the Member in such Eligible Security during the calendar year by (B) the sum of the Quote Credits earned by all Members in such Eligible Security during the calendar year.

(i) **Quote Credits**. A Member shall earn one "Quote Credit" for each second of time (with a minimum of one full second) multiplied by dollar value of size that an automated best bid (offer) transmitted by the Member to the Processors during regular trading hours is equal to the price of the National Best Bid and Offer in the Eligible Security and does not lock or cross a previously displayed "automated quotation" (as defined under Rule 600 of Regulation NMS). The dollar value of size of a quote shall be determined by multiplying the price of a quote by its size.

(j) **Net Distributable Operating Income**. The "Net Distributable Operating Income" for any particular calendar year shall mean:

(i) all cash revenues, funds and proceeds received by the Company during such calendar year (other than Capital Contributions by the Members or amounts paid pursuant to Section 3.7(b) of this Agreement), including all revenues from (A) the CT Feeds, which includes the dissemination of information with respect to Eligible Securities to foreign marketplaces, and (B) FINRA quotation data and last sale information for securities classified as OTC Equity Securities under FINRA's Rule 6400 Series (the "FINRA OTC Data") ((A) and (B) collectively, the "Data Feeds"), and (C) any Membership Fees; less

(ii) 6.25% of the revenue received by the Company during such calendar year attributable to the segment of the Data Feeds reflecting the dissemination of information with respect to Network C Securities and FINRA OTC Data (but, for the avoidance of doubt, not including revenue attributable to the segment of the Data Feeds reflecting the dissemination of information with respect to Network A Securities and Network B Securities), which amount shall be paid to FINRA as compensation for the FINRA OTC Data;[1] less

(iii) reasonable working capital reserves and reasonable reserves for contingencies for such calendar year, as determined by the Operating Committee, and all costs and expenses of the Company during such calendar year, including:

[1] All costs associated with collecting, consolidating, validating, generating, and disseminating the FINRA OTC Data are borne directly by FINRA and not the Company and the Members.

(A) all amounts payable during such calendar year to the Administrator pursuant to the Administrative Services Agreement or this Agreement;

(B) all amounts payable during such calendar year to the Processors pursuant to the Processor Services Agreements or this Agreement; and

(C) all amounts payable during such calendar year to third-party service providers engaged by or on behalf of the Company.

(k) **Initial Eligibility**. At the time a Member implements a Processor-approved electronic interface with the Processors, the Member will become eligible to receive revenue.

(l) **Quarterly Distributions**. The Company shall cause the Administrator to provide Members with written estimates of each Member's quarterly Net Distributable Operating Income within 45 calendar days of the end of the quarter, and estimated quarterly payments or billings shall be made on the basis of such estimates. All quarterly payments or billings shall be made to each eligible Member within 45 days following the end of each calendar quarter in which the Member is eligible to receive revenue; provided, that each quarterly payment or billing shall be reconciled against a Member's cumulative year-to-date payment or billing received to date and adjusted accordingly; further, provided, that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Monthly interest shall start accruing 45 days following the month in which it is earned and accrue until the date on which the payment is made.

(m) **Itemized Statements**. In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit D, the Company shall cause the Administrator to submit to the Members a quarterly itemized statement setting forth the basis upon which Net Distributable Operating Income was calculated. Such Net Distributable Operating Income shall be adjusted annually based solely on the quarterly itemized statement audited pursuant to the annual audit. The Company shall cause the Administrator to pay or bill Members for the audit adjustments within thirty days of completion of the annual audit. Upon the affirmative vote of Voting Representatives pursuant to Section 4.3, the Company shall cause the Administrator to engage an independent auditor to audit the Administrator's costs or other calculation(s).

EXHIBIT E

Fees

(To be determined by the Operating Committee under this Agreement)

[EXHIBIT F]*

* The Commission has deleted proposed Exhibit F in its entirety.