

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-85447 / March 28, 2019

Admin. Proc. File No. 3-19124

In the Matter of

Rule 610T of Regulation NMS

ORDER ISSUING STAY

On February 15, 2019, New York Stock Exchange LLC, the NASDAQ Stock Market, LLC, Cboe BZX Exchange, Inc., and other affiliated entities filed petitions in the United States Court of Appeals for the District of Columbia Circuit seeking review of recently promulgated Rule 610T of Regulation NMS, which creates the Transaction Fee Pilot program. Petitioners have filed with the Commission motions to stay the effect of Rule 610T and the Pilot program pending final resolution of their petitions for review.

Pursuant to Section 25(c)(2) of the Exchange Act and Section 705 of the Administrative Procedure Act, the Commission has discretion to stay Rule 610T and the Transaction Fee Pilot program pending judicial review if it finds that “justice so requires.”* Without addressing the merits of petitioners’ challenges to the Rule or the Pilot program, the Commission has determined to exercise that discretion to grant a stay, in part. Pending a decision by the court of appeals regarding the petitions for review and further order of the Commission, the Commission is staying the requirement that the registered national securities exchanges subject to the Pilot furnish Pilot data to the Commission, or publicly disclose it as applicable, during the pre-Pilot period, and is staying the Pilot and post-Pilot periods in their entirety. The remainder of Rule 610T will become effective on its effective date, meaning that the data-gathering requirement of the Pilot program’s pre-Pilot period shall begin as provided in the Rule and on further notice by the Commission. The exchanges will still be required to collect pre-Pilot data during the pre-Pilot period even though they are not required to transmit that data to the Commission or publicly disclose it while petitioners’ challenges are pending. Moreover, while not required to do so, the exchanges may transmit pre-Pilot data to Commission staff on a voluntary basis during the pendency of the stay for quality control purposes.

The Commission finds that this partial stay appropriately balances the Commission’s statutory duty to ensure the economically efficient execution of securities transactions, the public interest, and the harms petitioners assert they would suffer should the Pilot proceed during the pendency of litigation. Because the exchanges will not be required to alter their fee and rebate structures, report pre-Pilot data to the Commission,

* 15 U.S.C. § 78y(c)(2); 5 U.S.C. § 705.

or publicly disclose it, this partial stay avoids the majority of the potential harms petitioners allege. And the more limited impact on petitioners from allowing only the data-gathering aspect of the pre-Pilot period to proceed is justifiable to allow expeditious resumption of the Pilot if Rule 610T is eventually upheld, given the Commission's judgment that obtaining information about the impact of transaction-based pricing models on market and execution quality is important and necessary to further its statutory obligations and the public interest. The Commission therefore finds that a partial stay of Rule 610T's Pilot program as described above is consistent with what justice requires.

Accordingly, it is ORDERED, pursuant to Section 25(c)(2) of the Exchange Act and Section 705 of the Administrative Procedure Act that petitioners' motions for a stay of Rule 610T and its Transaction Fee Pilot program pending resolution of their petitions for review by the court of appeals be, and hereby are, granted in part. The Pilot and post-Pilot periods identified in Rule 610T(c)(1)(ii) and (iii), respectively, are stayed in their entirety pending a decision by the court of appeals regarding the petitions for review and further order of the Commission. The remainder of Rule 610T shall become effective in the ordinary course, and the Rule's pre-Pilot period identified in Rule 610T(c)(1)(i) shall become effective as provided in the Rule and on further notice by the Commission. The exchanges shall comply with the data-compilation requirements in Rules 610T(d) and (e) during the pre-Pilot period. However, pending a decision by the court of appeals regarding the petitions for review and further order by the Commission, the data-reporting and public disclosure requirements created by Rules 610T(d) and (e) are stayed.

By the Commission.

Eduardo A. Aleman
Deputy Secretary