

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2022–129 and CP2022–133; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 79 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 21, 2022; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: September 29, 2022.

2. *Docket No(s)*: MC2022–130 and CP2022–134; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 42 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 21, 2022; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*:

Jennaca D. Upperman; *Comments Due*: September 29, 2022.

3. *Docket No(s)*: MC2022–131 and CP2022–135; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 43 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 21, 2022; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Kenneth R. Moller; *Comments Due*: September 29, 2022.

4. *Docket No(s)*: MC2022–132 and CP2022–136; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 44 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 21, 2022; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: September 29, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95848; File No. S7–24–89]

### 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

September 21, 2022.

## I. Introduction

On November 5, 2021,<sup>1</sup> the Participants<sup>2</sup> in the Joint Self-

<sup>1</sup> See Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

<sup>2</sup> The “Participants” are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; MIAx PEARL, LLC; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc.

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” or “Plan”)<sup>3</sup> filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)<sup>4</sup> and Rule 608 of Regulation National Market System (“NMS”)<sup>5</sup> thereunder,<sup>6</sup> a proposal (the “Proposed Amendment”) to amend the UTP Plan to implement the non-fee-related aspects of the Commission’s Market Data Infrastructure Rules (“MDI Rules”).<sup>7</sup> The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.<sup>8</sup>

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,<sup>9</sup> to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.<sup>10</sup> On May 19, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,<sup>10</sup> the Commission extended the period within which to conclude proceedings regarding the Proposed

<sup>3</sup> The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. See Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

<sup>4</sup> 15 U.S.C. 78k–1.

<sup>5</sup> 17 CFR 242.608.

<sup>6</sup> The “MDI Rules” as used in this Order, and as relevant to the Proposed Amendment, are Rules 600, 603, and 614 of Regulation NMS. 17 CFR 242.600, 603, 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 Release in the U.S. Court of Appeals for the District of Columbia 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).

<sup>7</sup> See Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021) (“Notice”). Comments received in response to the Notice are available at <https://www.sec.gov/comments/s7-24-89/s72489.htm>.

<sup>8</sup> 17 CFR 242.608(b)(2)(i).

<sup>9</sup> See Securities Exchange Act Release No. 94308 (Feb. 24, 2022), 87 FR 11755 (Mar. 2, 2022) (“OIP”). Comments received in response to the OIP are available at <https://www.sec.gov/comments/s7-24-89/s72489.htm>.

<sup>10</sup> See 17 CFR 242.608(b)(2)(i).

<sup>1</sup> See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Amendment to July 24, 2022,<sup>11</sup> and on July 21, 2022, the Commission further extended the period within which to conclude proceedings regarding the Proposed Amendment to September 22, 2022.<sup>12</sup>

This order disapproves the Proposed Amendment.<sup>13</sup>

## II. Overview

Pursuant to Regulation NMS and the Equity Data Plans,<sup>14</sup> the national securities exchange and national securities associations (“self-regulatory organizations” or “SROs”) must provide certain information with respect to quotations for and transactions in NMS stocks (“NMS information”) to an exclusive plan securities information processor (“exclusive SIP”), which consolidates the NMS information and makes it available to market participants on the consolidated tapes. The purpose of the Equity Data Plans is to facilitate the collection and dissemination of SIP 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.”<sup>15</sup> Because the infrastructure for the collection, consolidation, and dissemination of this data had not been significantly updated since its initial implementation in the 1970s, the Commission adopted amendments to Regulation NMS that increase the

content of NMS information and amend the manner in which such NMS information is collected, consolidated, and disseminated by the Equity Data Plans.<sup>16</sup> In the MDI Rules Release, the Commission stated, “[t]he widespread availability of timely market information promotes fair and efficient markets and facilitates the ability of brokers and dealers to provide best execution to their customers.”<sup>17</sup>

The MDI Rules increase the content of NMS information and modify the manner in which NMS information is collected, consolidated, and disseminated. Significantly, under the MDI Rules, the Commission required the introduction of a competitive decentralized consolidation model under which competing consolidators and self-aggregators will replace the exclusive SIPs that collect, consolidate, and disseminate equity market data under the Equity Data Plans.<sup>18</sup> Although the exclusive SIPs will no longer disseminate consolidated information for an individual NMS stock, the Equity Data Plans will continue to play an important role—they will develop and propose fees for the data content underlying consolidated market data, collect and allocate revenues collected for this data, develop the monthly performance metrics for competing consolidators, and provide an annual assessment of competing consolidator performance.

Rule 614(e) of Regulation NMS requires 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 plan(s) to the decentralized consolidation model.<sup>19</sup> Specifically, Rule 614(e)(1) directs the participants to file an amendment to conform the plan(s) 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. The Proposed Amendment was filed by the Participants pursuant to this requirement.<sup>20</sup>

As explained below, however, the Proposed Amendment does not comply with Rule 614(e)(1) because it does not conform the Plan 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. For example, inconsistent with the decentralized consolidation model and with the requirements of Rule 614(e), the Proposed Amendment: (1) amends the Plan to reflect that it will disseminate *consolidated market data* to competing consolidators and self-aggregators, even though the Plan will not be disseminating any consolidated market data;<sup>21</sup> (2) fails to amend the Plan to reflect that the Processor will no longer have the responsibility to disseminate regulatory halt notices once the decentralized consolidation model has been implemented;<sup>22</sup> (3) fails to include requirements for the Participants to timestamp every element of data necessary to generate consolidated market data;<sup>23</sup> and (4) fails to amend the Plan to remove references to a single processor.<sup>24</sup>

Because the Proposed Amendment is inconsistent with the MDI Rules, specifically Rule 614(e), the Commission must disapprove the Proposed Amendment under Rule 608(b)(2) of Regulation NMS because it cannot find that it 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

<sup>11</sup> See Securities Exchange Act Release No. 94954 (May 19, 2022), 87 FR 31922 (May 25, 2022).

<sup>12</sup> See Securities Exchange Act Release No. 95347 (July 21, 2022), 87 FR 45142 (July 27, 2022).

<sup>13</sup> The Participants have filed similar amendments to the Second Restatement of the Consolidated Tape Association (“CTA”) Plan and the Restated Consolidated Quotation (“CQ”) Plan, which the Commission is also disapproving. See Securities Exchange Act Release No. 95850 (Sept. 21, 2022) (File No. SR-CTA/CQ-2021-02). Separately, certain Participants have also filed amendments to implement the fee-related aspects of the MDI Rules. See Securities Exchange Act Release Nos. 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021) (File No. SR-CTA/CQ-2021-03), and 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (File No. S7-24-89) (together, the “Proposed Fee Amendments”). The Commission is, by separate orders, also disapproving the Proposed Fee Amendments. See Securities Exchange Act Release No. 95851 (Sept. 21, 2022) (File No. SR-CTA/CQ-2021-03), and 95849 (Sept. 21, 2022) (File No. S7-24-89).

<sup>14</sup> The three effective national market system plans that govern the collection, consolidation, processing, and dissemination of certain NMS information are: (1) the CTA Plan; (2) the CQ Plan; and (3) the UTP Plan (collectively, the “Equity Data Plans”). Each of the Equity Data Plans is an effective national market system plan under 17 CFR 242.608 (Rule 608) of Regulation NMS. See also Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order approving UTP Plan).

<sup>15</sup> Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593 (Jan. 21, 2010).

<sup>16</sup> See MDI Rules Release, *supra* note 6.

<sup>17</sup> *Id.* at 18599.

<sup>18</sup> See *id.* at 18637 (“The Commission is adopting a decentralized consolidation model in which competing consolidators, rather than the exclusive SIPs, will collect, consolidate, and disseminate consolidated market data.”).

<sup>19</sup> 17 CFR 242.614(e). See also MDI Rules Release, *supra* note 6, 86 FR at 18680–81.

<sup>20</sup> The Participants have filed the Proposed Amendment under the Equity Data Plans. See *supra* note 14. While the Commission issued an order on August 6, 2020, approving, as modified, a new national market system plan regarding equity market data—the CT Plan—to replace the existing

Equity Data Plans, that order was stayed on October 13, 2021, see *The Nasdaq Stock Market, et al. LLC v. Securities and Exchange Commission*, No. 21–1167 (D.C. Cir. Oct. 13, 2021), which was before the Participants filed the Proposed Amendment. The Commission’s order approving the CT Plan was subsequently vacated. See *The Nasdaq Stock Market LLC, et al. v. Securities and Exchange Commission*, Nos. 21–1167, 21–1168, 21–1169 (D.C. Cir., July 5, 2022) (vacating Securities Exchange Act Release No. 92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (Order Approving, as Modified, a National Market System Plan Regarding Consolidated Market Data)).

<sup>21</sup> 17 CFR 242.603(b). See also MDI Rules Release, *supra* note 6, 86 FR at 18653 (“[T]hese changes to Rule 603(b) are appropriate to establish the decentralized consolidation model.”).

<sup>22</sup> See, e.g., MDI Rules Release, *supra* note 6, 86 FR at 18633–35 (discussing the provision of “regulatory data” by the primary listing exchange for an NMS stock to competing consolidators and self-aggregators under the decentralized consolidation model).

<sup>23</sup> 17 CFR 242.614(e)(2).

<sup>24</sup> The MDI Rules Release amended Rule 603(b) to remove the requirement that “all consolidated information for an individual NMS stock [be disseminated] through a single plan processor.” See MDI Rules Release, *supra* note 6, 86 FR at 18652–53. See also *supra* note 21; MDI Rules Release, *supra* note 6, 86 FR at 18701 (discussing the retirement of the exclusive SIPs).

the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.<sup>25</sup>

### III. Summary of the Proposed Amendment

The Participants propose to amend the Plan to comply with Rule 614(e) of the MDI Rules. Under Rule 614(e), participants to the effective national market system plan(s) for NMS stocks were required to file by November 5, 2021, an amendment with the Commission that includes each of the requirements of Rule 614(e)(1)–(5).<sup>26</sup>

Specifically, Rule 614(e)(1) requires the amendment to conform the effective national market system plan(s) for NMS stocks to reflect that, under the decentralized consolidation model, the national securities exchange and national securities association participants will provide to competing consolidators and self-aggregators the information, with respect to quotations for and transactions in NMS stocks, that is necessary to generate consolidated market data.

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

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

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

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

The following is a summary of the changes proposed to be made to the Plan by the Proposed Amendment.<sup>27</sup>

#### Section III. Definitions

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

The Proposed Amendment amends the definitions of “News Service,” “Subscriber,” and “Vendor” to add competing consolidators as a source of Transaction Reports and Quotation Information.

The Proposed Amendment defines “Primary Listing Exchange,” to mean “the national securities exchange on which an Eligible Security is listed.” The proposed definition further states, “[i]f an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.” The Participants explain that this definition is being added to comply with the requirements of the MDI Rules and to replace the definition of “Listing Market.”<sup>28</sup>

The Proposed Amendment amends the definition of “Quotation Information” to define it as “all information with respect to quotations for Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data.” Similarly, the Proposed Amendment amends the definition of “Transaction Reports” to mean “all information with respect to transactions in Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data.” The Participants explain that these amendments are intended to track the MDI Rules more closely.<sup>29</sup>

#### Section IV. Administration of Plan

The Proposed Amendment amends Section IV.B., Operating Committee: Authority, to add references to competing consolidators and self-aggregators. Specifically, the Proposed

Amendment states that the Operating Committee shall be responsible for overseeing the consolidation<sup>30</sup> of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to competing consolidators and self-aggregators, among other entities; that the Operating Committee shall be responsible for periodically evaluating the Processor and competing consolidators; and that the Operating Committee shall be responsible for setting the level of fees to be paid by competing consolidators and self-aggregators, among other entities, for services relating to Quotation Information or Transaction Reports in Eligible Securities, and for taking action in respect thereto in accordance with the Plan.

The Proposed Amendment also amends Section IV.B. to require the Operating Committee to publish on the Plan’s website the Primary Listing Exchange for each Eligible Security and to calculate and publish, on a monthly basis, consolidated market data gross revenues for Eligible Securities. The Participants explain that these amendments are intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(ii).<sup>31</sup>

#### Section VII. Administrative Functions

The Proposed Amendment amends this section by deleting references to the Processor. Additionally, under the Proposed Amendment, the Administrator, not the Processor, shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in the Plan. The Participants explain that the Administrative Functions described in the section are more appropriately ascribed to the Administrator.<sup>32</sup>

#### Section VIII. Evaluation of Competing Consolidators

The Proposed Amendment adds new Section VIII to require the Operating Committee to assess the performance of competing consolidators and to submit an annual report to the Commission

<sup>30</sup> Under the decentralized consolidation model, the Operating Committee would no longer oversee the consolidation of data by the Processor, but rather the provision of data underlying consolidated market data to competing consolidators and self-aggregators. See Rule 603(b), 17 CFR 242.603(b); Rule 614(e)(1), 17 CFR 242.614(e)(1). See also MDI Rules Release, *supra* note 6, 86 FR at 18682.

<sup>31</sup> See Notice, *supra* note 7, 86 FR at 67541.

<sup>32</sup> See *id.*

<sup>27</sup> The full text of the Proposed Amendment appears as Attachment A to the Notice. See Notice, *supra* note 7, 86 FR at 67543–55.

<sup>28</sup> See *id.* at 67541. The Proposed Amendment deletes a definition of “Primary Listing Market” from former Section X. (Section XI., as proposed), Regulatory and Operational Halts.

<sup>29</sup> See *id.*

<sup>25</sup> 17 CFR 242.608(b)(2).

<sup>26</sup> 17 CFR 242.614(e).

containing the assessment.<sup>33</sup> The Proposed Amendment requires this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these changes are intended to comply with the requirements of Rule 614(e)(3).<sup>34</sup>

In addition, the Proposed Amendment requires the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).<sup>35</sup> Rule 614(d)(5) requires competing consolidators to publish on their websites monthly performance metrics as defined by the effective national market system plan(s) for NMS stocks.<sup>36</sup> The Proposed Amendment adds the following monthly performance metrics to this section:

A. Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

B. Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;

C. System availability statistics, including system up-time percentage and cumulative amount of outage time;

D. Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

E. Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

1. When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;
2. When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and
3. When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

The Participants explain that they have proposed to amend Section VIII to define the monthly performance metrics in accordance with Rule 614(d)(5).<sup>37</sup>

*Section IX. (Previously Section VIII.), Transmission of Information to Processor, Competing Consolidators, and Self-Aggregators by Participants*

The Proposed Amendment amends Section IX.A., Quotation Information, to add the requirement that each Participant collect and transmit to competing consolidators and self-aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS,<sup>38</sup> including all data necessary to generate consolidated market data. Additionally, the Proposed Amendment requires each Participant to make available quotation information, and changes in any such information, to competing consolidators and self-aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.

In addition, under the Proposed Amendment, each bid and offer with respect to an Eligible Security furnished to competing consolidators and self-aggregators by any Participant pursuant to the Plan would be accompanied by the time (reported in microseconds) the Participant made such bid and offer available to Competing Consolidators and Self Aggregators. With respect to FINRA, the Proposed Amendment states that if FINRA's quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processor, competing consolidators, and self-aggregators with the time of the quotation as published on the quotation facility's proprietary feed, and that FINRA shall convert any quotation times reported to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor, competing consolidators, and self-aggregators in microseconds.

Similarly, the Proposed Amendment amends Section IX.B., Transaction Reports, to require each Participant to make available Transaction Reports to competing consolidators and self-aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.

The Proposed Amendment also amends Section IX.B. to require Transaction Reports to competing

consolidators and self-aggregators to include the time (in microseconds) that the Participant made such information available to competing consolidators and self-aggregators. With respect to FINRA, the Proposed Amendment states that if FINRA's trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, competing consolidators and self-aggregators, then the FINRA trade reporting facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed. Additionally, the Proposed Amendment requires FINRA to convert times that its members report to it in seconds or milliseconds to microseconds and to furnish such times to the Processor, Competing Consolidators, and Self-Aggregators in microseconds. The Participants state that the amendments to Sections IX.A. and IX.B. are designed to comply with the requirements of Rule 614(e)(1) and (2).<sup>39</sup>

The Proposed Amendment also deletes the following statement from Section IX.B.: "The Participants shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant."

In addition, Section IX.B. currently includes a list of types of transactions that are not required to be reported to the Processor pursuant to the Plan. The Proposed Amendment adds competing consolidators and self-aggregators as entities to which these types of transactions are not required to be reported.

Finally, the Proposed Amendment amends Section IX.D. to include references to competing consolidators and self-aggregators. Section IX.D., as amended would read: "Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, Competing Consolidators, and Self-Aggregators, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such condition or event and shall resume collecting and transmitting Quotation Information and

<sup>33</sup> As a result of this addition, the Proposed Amendment rennumbers the remaining sections of the Plan.

<sup>34</sup> See Notice, *supra* note 7, 86 FR at 67541.

<sup>35</sup> 17 CFR 242.614(d)(5).

<sup>36</sup> See *id.*

<sup>37</sup> See Notice, *supra* note 7, 86 FR at 67541–42.

<sup>38</sup> 17 CFR 242.603(b).

<sup>39</sup> Notice, *supra* note 7, 86 FR at 67542. The Participants state that the Proposed Amendment amends Section IX.B., Transaction Reports, to add the requirement that each Participant agrees to collect and transmit to competing consolidators and self-aggregators all transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS; however, the Proposed Amendment does not actually propose to make this change to the text of the Plan. See *id.* at 67550.

Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, Competing Consolidators, and Self-Aggregators, the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.”

*Section XI. (Previously Section X.), Regulatory and Operational Halts*

The Proposed Amendment revises this section to delete the definition of “Primary Listing Market” from Section XI.A., Definitions for Purposes of Section XI. The Proposed Amendment also replaces references to “Primary Listing Market” with “Primary Listing Exchange” throughout Section XI.<sup>40</sup> The Participants state that this change would align the text of the Plan with terminology in the MDI Rules.<sup>41</sup>

The Proposed Amendment amends Section XI.B., Operational Halts, to state that competing consolidators and self-aggregators shall be notified by a Participant if that Participant has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, 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. Similarly, the Proposed Amendment amends Section XI.H., Communications, to state that if a Primary Listing Exchange for an Eligible Security determines it appropriate to initiate a Regulatory Halt, it will notify competing consolidators and self-aggregators 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 Operating Committee and the Primary Listing Exchange. The Participants state that these changes are consistent with Rule 614(e)(1) and would ensure that competing consolidators and self-aggregators are notified of information related to Regulatory and Operational Halts and that competing consolidators can

disseminate this information to their customers.<sup>42</sup>

*Section XII. (Previously Section XI.), Hours of Operation*

The Proposed Amendment amends Section XII.B.(ii) and (iii) to add references to competing consolidators and self-aggregators. Specifically, with respect to the reporting obligations of Participants, proposed Section XII.B.(ii) provides that transactions in Eligible Securities executed after 8:00 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processor, competing consolidators, and self-aggregators 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. And proposed Section XII.B.(iii) provides that transactions in Eligible Securities executed between 12:00 a.m. (midnight) and 4:00 a.m. ET shall be transmitted to the Processor, competing consolidators, and self-aggregators between 4:00 a.m. and 9:30 a.m. ET, on trade date, shall be designated as “.T” trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution.

The Proposed Amendment also amends Section XII.D. to require Participants that enter Quotation Information or submit Transaction Reports to competing consolidators and self-aggregators between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET until 8:00 p.m. ET, to do so for all Eligible Securities in which they enter quotations.

*Section XIV. (Previously Section XIII.), Financial Matters*

The Proposed Amendment amends Section XIV.C., Maintenance of Financial Records, by replacing references to the Processor with references to the Administrator. The Participants explain that the responsibilities described in that section are more appropriately ascribed to the Administrator.<sup>43</sup>

*Section XV. (Previously Section XIV.), Indemnification*

The Proposed Amendment amends this section to add references to Competing Consolidators and Self-Aggregators and to remove a reference to Vendors as a recipient of Transaction Reports, Quotation Information, or other information disseminated by the Processor. Specifically, the first

paragraph in this section now states: “Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor, Competing Consolidators, and Self-Aggregators by such Participant and disseminated by the Processor, Competing Consolidators, and Self-Aggregators. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.”

*Section XVIII. (Previously Section XVII.), Applicability of Securities Exchange Act of 1934*

The Proposed Amendment amends this section to include Competing Consolidators and Self-Aggregators as subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

*Section XIX. (Previously Section XVIII.), Operational Issues*

The Proposed Amendment amends Section XIX.A. to include references to Competing Consolidators and Self-Aggregators to require each Participant to collect and validate quotes and last sale reports within its own system prior to transmitting this data to Competing Consolidators and Self-Aggregators.

*Section XXI. Depth of Book Display*

The Proposed Amendment deletes this section. The Participants explain that this provision is obsolete given the MDI Rules.<sup>44</sup>

## IV. Discussion

### A. The Applicable Standard of Review

Under Rule 608(b)(2) of Regulation NMS, the Commission shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that the 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

<sup>40</sup> The Proposed Amendment does not replace a reference to Primary Listing Market in the definition of “Regulatory Halt” in this section.

<sup>41</sup> See Notice, *supra* note 7, 86 FR at 67542.

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

the purposes of the Act.<sup>45</sup> The Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.<sup>46</sup> Furthermore, Rule 700(b)(3)(ii) of the Commission's Rules of Practice states:

The burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans is on the plan participants that filed the NMS plan filing. Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that an NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to NMS plans.<sup>47</sup>

For the reasons discussed below, the Commission does not find that the Participants have met their burden to demonstrate that the Proposed Amendment is consistent with the Act.<sup>48</sup> Specifically, the Commission does not find that the Participants have demonstrated that the Proposed Amendment is consistent with either Rule 614(e) of Regulation NMS or Rule 608 of Regulation NMS. The Proposed Amendment clearly does not comply with the requirements of the MDI Rules.<sup>49</sup> Accordingly, the Commission cannot make a finding that the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.<sup>50</sup>

#### *B. The Requirements of the MDI Rules Regarding the Proposed Amendment*

As adopted by the Commission, the MDI Rules implement a decentralized consolidation model in which competing consolidators would replace the exclusive plan processors of the Equity Data Plans as the entities responsible for disseminating consolidated market data.<sup>51</sup> The MDI Rules Release provides for an "initial parallel operation period" of 180 days during which the existing exclusive SIPs for the Equity Data Plans would

operate in parallel with the competing consolidators,<sup>52</sup> and further provides for the transition from the initial parallel operation period to the retirement of the exclusive SIPs for equity market data:

Within 90 days of the end of the initial parallel operation period, the Operating Committee will make a recommendation to the Commission as to whether the exclusive SIPs should be decommissioned. The Commission will consider an effective national market system plan amendment to effectuate a cessation of the operations of the exclusive SIPs and, if consistent with the requirements of Rule 608 and the Exchange Act, approve such an amendment.<sup>53</sup>

Pursuant to Rule 614(e)(1) of Regulation NMS, and as discussed in the MDI Rules Release, the Participants to the Plan were required to file an amendment to conform the Plan 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 national securities exchange and national securities association participants to competing consolidators and self-aggregators.<sup>54</sup>

#### *C. Whether the Proposed Amendment Is Consistent With Rule 614(e)(1) of Regulation NMS*

##### *1. Consistency With the Decentralized Consolidation Model*

Two commenters recommend disapproval of the Proposed Amendment because the amendment does not properly conform the Plan to the MDI Rules in that the amendments fail to accurately reflect the decentralized consolidation model.<sup>55</sup> One commenter states, "[t]he MDI rule represents a fundamental shift to a decentralized consolidation model. The Plan amendments need to reflect that throughout the body and exhibits of the Plans."<sup>56</sup> The commenter also argues that the Proposed Amendment must "[a]cknowledge that the Plan is no longer responsible for the creation,

distribution and pricing of consolidated market data."<sup>57</sup>

The commenter states, "[d]espite the fact that competing consolidators generate consolidated market data, the Nasdaq/UTP Plan as amended at IV(B) states that consolidated data is disseminated to competing consolidators."<sup>58</sup> The commenter reiterates that only competing consolidators would externally distribute and charge for consolidated market data and that the Plan would only be selling underlying content.<sup>59</sup>

The commenter also argues that the sections of the Plan that discuss vendors' and subscribers' contractual relationships with the Plan should be "removed or significantly altered to reflect that the Plan no longer has agreements with vendors and end users and instead have agreements with the competing consolidators and self-aggregators related specifically to the cost of content underlying core market data."<sup>60</sup> This commenter states that "the relationship between competing consolidators and their customers should not include a contractual relationship with the plan" because vendors would be receiving consolidated market data from competing consolidators rather than from the Plan.<sup>61</sup>

This commenter also objects to the continued references to subscribers and vendors in the Plan as recipients of data from the Processor, arguing that under the decentralized consolidation model, "only competing consolidators would sell consolidated market data to vendors and subscribers."<sup>62</sup>

One commenter objects to the retention of the concept of a single processor in the Proposed Amendment.<sup>63</sup> Another commenter also states that "it is worth noting that the Plans do not reflect the decentralized consolidation model nor do they acknowledge the parallel period."<sup>64</sup> This commenter requests clarification of how the Plan will operate during the parallel operation period, such as the inclusion in the Plan of objective criteria for ending the parallel period and the addition of a section devoted to competing consolidators and self-

<sup>45</sup> *Id.* at 4–5.

<sup>46</sup> MayStreet Letter I, *supra* note 55, at 4, n.5.

<sup>47</sup> See MayStreet Letter II, *supra* note 55, at 4–5.

<sup>48</sup> See MayStreet Letter I, *supra* note 55, at 3.

<sup>49</sup> *Id.* See also MayStreet Letter II, *supra* note 54, at 9 (arguing that, since the Plan would only be selling underlying content to competing consolidators and self-aggregators, vendor and subscriber agreements should not be required).

<sup>50</sup> MayStreet Letter I, *supra* note 55, at 3.

<sup>51</sup> See SIFMA Letter I, *supra* note 55, at 8.

<sup>52</sup> MayStreet Letter II, *supra* note 55, at 8.

<sup>45</sup> 17 CFR 242.608(b)(2).

<sup>46</sup> *Id.*

<sup>47</sup> 17 CFR 201.700(b)(3)(ii).

<sup>48</sup> 17 CFR 201.700(b)(3).

<sup>49</sup> As discussed below, the Proposed Amendment does not comply with MDI Rules 603(b), 614(e)(1), and 614(e)(2). 17 CFR 242.603(b), 17 CFR 242.614(e)(1), 17 CFR 242.614(e)(2).

<sup>50</sup> 17 CFR 242.608(b)(2).

<sup>51</sup> See MDI Rules Release, *supra* note 6, 86 FR at 18637.

<sup>52</sup> See *id.* at 18700.

<sup>53</sup> *Id.* at 18701.

<sup>54</sup> See *id.* at 18700–01.

<sup>55</sup> See Letter from Patrick Flannery, Chief Executive Officer, MayStreet, Inc., to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) ("MayStreet Letter I"); Letter from Manisha Kimmel, Chief Policy Officer, MayStreet, Inc., to Vanessa Countryman, Secretary, Commission (Mar. 23, 2022) ("MayStreet Letter II"); Letter from Ellen Greene, Managing Director, Equity and Options Market Structure, and William C. Thum, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) ("SIFMA Letter I").

<sup>56</sup> MayStreet Letter II, *supra* note 55, at 2.

aggregators to help distinguish between their obligations and the obligations of the exclusive SIPs during the parallel period.<sup>65</sup> The commenter recommends that the Proposed Amendment clarify that all content underlying consolidated market data will be provided to competing consolidators and self-aggregators, and provide validation procedures to be followed by competing consolidators.

The Participants submitted a comment letter in which they argue that maintaining the exclusive SIPs through the parallel operation period is consistent with the MDI Rules Release, stating:

[P]ursuant to the phased transition period set forth in the MDI Rules Release, the Plans must operate a parallel operation period during which the decentralized consolidation model introduced by the MDI Rules will run in parallel to the existing exclusive SIP model. . . . After completion of the parallel operation period, the Plans are required to submit an amendment to effectuate a cessation of the operations of the exclusive SIPs, which would include removing references of the exclusive SIPs from the text of the Plans.<sup>66</sup>

The Participants also maintain that the exclusive SIPs will continue to provide market data under the current Equity Data Plans during the parallel operation period and that the inclusion of the exclusive SIPs in the Equity Data Plans (as provided for in the Proposed Amendment) until the submission of a further amendment after the parallel operation period is consistent with the MDI Rules Release.<sup>67</sup>

The Commission agrees with the commenters who argue that the Proposed Amendment does not properly conform the Plan to the decentralized consolidation model. *First*, under the MDI Rules, the SROs are required to make available to competing consolidators and self-aggregators the data necessary to generate consolidated market data,<sup>68</sup> and competing consolidators and self-aggregators will then generate consolidated market data,

rather than receive consolidated market data from the Plan.<sup>69</sup> The Participants, however, propose to amend the UTP Plan to give the Operating Committee the authority to oversee the consolidation of Quotation Information and Transaction Reports from the Participants to competing consolidators and self-aggregators.<sup>70</sup> This is not consistent with the decentralized consolidation model.

Specifically, Rule 614(d) provides that competing consolidators shall collect any information with respect to quotations for and transactions in NMS stocks as provided in Rule 603(b) that is necessary to create a consolidated market data product from each national securities exchange and national securities association,<sup>71</sup> calculate and generate a consolidated market data product,<sup>72</sup> and make the consolidated market data product available to subscribers.<sup>73</sup> Self-aggregators will receive information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data, and generate consolidated market data solely for their internal use.<sup>74</sup> Additionally, pursuant to Rule 603(b), the Participants shall make available to all competing consolidators and self-aggregators “all data necessary to generate consolidated market data.”<sup>75</sup> Accordingly, the Plan’s modified role under the decentralized consolidation model will be to develop and file with the Commission the fees associated with the underlying data, to collect and allocate revenues for that data, to develop monthly performance metrics for competing consolidators, and to provide an annual assessment of competing consolidator performance.<sup>76</sup> Therefore, the Proposed Amendment impermissibly provides for the dissemination by the Plan of consolidated market data to competing

consolidators and self-aggregators, which is inconsistent with Rule 603(b), which requires the Participants to make available the data necessary to generate consolidated market data to competing consolidators and self-aggregators so that, pursuant to Rule 614(d), those entities can generate consolidated market data themselves.

*Second*, the Proposed Amendment is inconsistent in certain other ways with the decentralized consolidation model provided for in the MDI Rules. Under the decentralized consolidation model, the primary listing exchanges will be required to collect, calculate, and make available regulatory data, which includes information relating to regulatory halts, to competing consolidators and self-aggregators in accordance with the definition of “regulatory data” in Rule 600(b)(78).<sup>77</sup> The Proposed Amendment, however, does not reflect this requirement with respect to regulatory data. For example, the Proposed Amendment fails to amend the Plan to reflect that the Processor will no longer have the responsibility to disseminate regulatory halt notices once the decentralized consolidation model has been implemented.

The Proposed Amendment also does not include requirements for the Participants to timestamp every element of data necessary to generate consolidated market data. Rule 614(e)(2) requires the application of timestamps by the Participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated by the Participant and the time the Participant made such information available to competing consolidators and self-aggregators.<sup>78</sup> While the Proposed Amendment amends the UTP Plan’s section governing the transmission of Quotation Information to require any Participant that furnishes bids and offers to competing consolidators and self-aggregators to timestamp the time the Participant made such bid and offer

<sup>69</sup> See Rule 614(d)(1)–(3). 17 CFR 242.614(d)(1)–(3).

<sup>70</sup> See Notice, *supra* note 7, 86 FR at 67545 (UTP Plan Proposed Amendment at Section IV.B.).

<sup>71</sup> See Rule 614(d)(1), 17 CFR 242.614(d)(1).

<sup>72</sup> See Rule 614(d)(2), 17 CFR 242.614(d)(2).

<sup>73</sup> See Rule 614(d)(3), 17 CFR 242.614(d)(3). The MDI Rules also define “competing consolidator” as a securities information processor required to be registered pursuant to § 242.614 (Rule 614) or a national securities exchange or national securities association that receives information with respect to quotations for and transactions in NMS stocks and generates a consolidated market data product for dissemination to any person. See 17 CFR 242.600(b)(16).

<sup>74</sup> The definition of “self-aggregator” was added by the MDI Rules. See 17 CFR 242.600(b)(83). A self-aggregator may make consolidated market data available to its affiliates that are registered with the Commission for their internal use. *Id.*

<sup>75</sup> 17 CFR 242.603(b).

<sup>76</sup> See MDI Rules Release, *supra* note 6, 86 FR at 18604, 18681.

<sup>77</sup> 17 CFR 242.600(b)(78) defines “Regulatory Data” as, among other things: (A) Information regarding Short Sale Circuit Breakers pursuant to § 242.201; (B) Information regarding Price Bands required pursuant to the Plan to Address Extraordinary Market Volatility . . . (C) Information relating to regulatory halts or trading pauses (news dissemination/pending, LULD, Market-Wide Circuit Breakers) and reopenings or resumptions; (D) The official opening and closing prices of the primary listing exchange; and (E) An indicator of the applicable round lot size. See 17 CFR 242.600(b)(78)(i). Regulatory data is one element of “consolidated market data,” as defined in Rule 600(b)(19). See *supra* note 68.

<sup>78</sup> 17 CFR 242.614(e)(2).

<sup>65</sup> See *id.* at 7–8.

<sup>66</sup> Letter from James P. Dombach, Counsel for CTA, CQ, and UTP Plans, McGonigle, P.C., to Vanessa Countryman, Secretary, Commission, at 2 (Mar. 25, 2022) (“McGonigle Letter”).

<sup>67</sup> See *id.* at 1–2.

<sup>68</sup> See Rule 603(b), 17 CFR 242.603(b). See also Rule 600(b)(19), which defines “consolidated market data” as the following data, consolidated across all national securities exchanges and national securities associations: (i) Core data; (ii) Regulatory data; (iii) Administrative data; (iv) Self-regulatory organization-specific program data; and (v) Additional regulatory, administrative, or self-regulatory organization-specific program data elements defined as such pursuant to the effective national market system plan or plans required under § 242.603(b). See 17 CFR 242.600(b)(19).



available to competing consolidators and self-aggregators,<sup>79</sup> this proposed timestamp provision does not apply to “all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data.”<sup>80</sup> Additionally, the Proposed Amendment does not specifically require that each Participant timestamp the data necessary to generate consolidated market data upon generation and upon the time it is made available to competing consolidators and self-aggregators, as required by Rule 614(e)(2).

And *finally*, the Commission disagrees with the Participants’ statement that the continued references to the role of the Processor in the Plan, as amended by the Proposed Amendment, comply with the MDI Rules Release’s implementation schedule for parallel operation of the exclusive SIP and the competing consolidators.<sup>81</sup> Rule 614(e)(1) requires the Participants to amend the Plan 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, *i.e.*, to conform the Plan to reflect the decentralized consolidation model.<sup>82</sup> However, the Proposed Amendment is not consistent with the decentralized consolidation model and does not conform to the fact that a single processor will no longer be in operation once the decentralized consolidation model has been fully implemented.

And while the MDI Rules Release contemplates the filing of a second amendment by the Plan “to effectuate a cessation of the operations of the exclusive SIPs,”<sup>83</sup> the current Proposed Amendment was required to conform the Plan 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, which, as discussed above, they have failed to do. Moreover, the failure of the Participants to explain in the Proposed Amendment how the Plan will function under the fully implemented decentralized consolidation model upon cessation of the exclusive SIPs not only denies market participants the opportunity to comment on those proposed provisions now, but it increases the uncertainty that firms face in determining whether to become competing consolidators or self-aggregators during the initial parallel operation period, thus hampering the implementation of the decentralized consolidation model required by the MDI Rules.<sup>84</sup>

Because the Proposed Amendment clearly does not comply with the plain terms of the MDI Rules<sup>85</sup> and is thus inconsistent with the requirements of Rule 614(e)(1), the Commission also does not find that the Participants have met their burden to demonstrate that the Proposed Amendment is consistent with Rule 608 as necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.<sup>86</sup>

## 2. Technical Comments

One commenter criticizes the failure of the Proposed Amendment to incorporate the definitions of the MDI Rules.<sup>87</sup> This commenter states, “[t]he definitions in each of the Plans should be updated to reflect the decentralized consolidation model. It is insufficient to simply refer to Rule 600(b), in large part because there seems to be confusion within the Plans as to the role of competing consolidators, self-aggregators, the exclusive SIPs and vendors.”<sup>88</sup> Specifically, this

commenter suggests that the Proposed Amendment add definitions of the following terms: competing consolidator, self-aggregator, consolidated market data, content underlying consolidated market data, initial parallel period, and parallel period, as well as a definition of the content that would be disseminated by the exclusive SIP to the Plan.<sup>89</sup> This commenter also suggests updating the existing definition of Processor, and clarifying the existing definitions of Subscriber and Vendor to reflect the decentralized consolidation model.<sup>90</sup>

This commenter also describes several other technical criticisms of the Proposed Amendment. The commenter states that the Proposed Amendment should have removed the addition of a new SRO participant from the Plan’s ministerial amendment list,<sup>91</sup> arguing that competing consolidators and self-aggregators would need more time to update their systems to handle the new Participant’s data.<sup>92</sup> The commenter also states that the Proposed Amendment needs to support the timestamps required by the MDI Rules to the microsecond,<sup>93</sup> and that validation procedures to be used by competing consolidators need to be added to the Plan to describe the Participants’ and the competing consolidator’s obligations.<sup>94</sup> The commenter further suggests that the Plan’s capacity planning process needs to apply to competing consolidators and self-aggregators so that these entities can meet SRO-expected capacity requirements.<sup>95</sup> Finally, the commenter states that the Plan’s conflict of interest and confidentiality provisions need to apply to competing consolidators since they will be replacing the exclusive SIPs.<sup>96</sup>

The Commission agrees with the commenter that the failure to include the definitions established by the MDI Rules contributes to ambiguity within the Plan. In lieu of incorporating the MDI Rules’ definitions, the Proposed Amendment adds a statement that “[t]erms used in this plan have the same meaning as the terms defined in Rule

<sup>79</sup> See Notice, *supra* note 7, 86 FR at 67550 (UTP Plan Proposed Amendment at Section IX.A.).

<sup>80</sup> In the MDI Rules Release, the Commission stated, “[s]pecifically, the timestamps applied by the SROs must be to the individual components of data content underlying consolidated market data, *i.e.*, all of the individual components of data content underlying core data, regulatory data, administrative data, self-regulatory organization-specific program data, and additional elements defined as ‘consolidated market data.’” MDI Rules Release, *supra* note 6, 86 FR at 18688.

<sup>81</sup> See McGonigle Letter, *supra* note 66, at 1–2. See also MDI Rules Release, *supra* note 6, 86 FR at 18700–01 (discussing the parallel operation implementation schedule).

<sup>82</sup> 17 CFR 242.614(e)(1).

<sup>83</sup> MDI Rules Release, *supra* note 6, 86 FR at 18701.

<sup>84</sup> See *id.* at 18699–700 (discussing the “first wave” registration period for competing consolidators, to begin on the date the Commission approves the amendments to the effective national market system plan(s) required under Rule 614(e) including the fees for the SRO data content necessary to generate consolidated market data).

<sup>85</sup> Specifically, Rules 603(b), 614(e)(1) and (e)(2), 17 CFR 242.603(b), 17 CFR 242.614(e)(1), 17 CFR 242.614(e)(2).

<sup>86</sup> See 17 CFR 242.608(b)(2).

<sup>87</sup> See MayStreet Letter II, *supra* note 55, at 5. This commenter also recommends that the Commission issue guidance to the Participants to aid in revising the Proposed Amendment. See *id.* at 4. The discussion and findings in this Order, in addition to the MDI Rules Release and the MDI Rules themselves, provide sufficient guidance to the Participants in amending the Plan.

<sup>88</sup> *Id.* at 5.

<sup>89</sup> See *id.* at 5–6.

<sup>90</sup> See *id.* at 6.

<sup>91</sup> A “ministerial amendment” permits an amendment to the Plan that is submitted by the Chairman of the UTP Plan Operating Committee to the Commission with less than 48 hours advance notice to the Participants. See Notice, *supra* note 7, 86 FR at 67554 (Proposed Amendment at Section XVII.).

<sup>92</sup> See MayStreet Letter II, *supra* note 55, at 6–7.

<sup>93</sup> See *id.* at 5.

<sup>94</sup> See MayStreet Letter I, *supra* note 55, at 4; MayStreet Letter II, *supra* note 55, at 8.

<sup>95</sup> See MayStreet Letter II, *supra* note 55, at 10.

<sup>96</sup> See *id.* at 7.



600(b) under the Act.”<sup>97</sup> This creates ambiguity because the Proposed Amendment uses terms adopted by the MDI Rules but does not include definitions of those terms, so their applicability and the obligations they create are unclear or are not reflected in the Proposed Amendment. For example, the Proposed Amendment adds a requirement for the collection and transmission of Quotation Information, stating that each Participant agrees to collect and transmit to competing consolidators and self-aggregators “all data necessary to generated [sic] consolidated market data.”<sup>98</sup> However, the Proposed Amendment does not define “consolidated market data” or even the data necessary to generate it. The Plan thus fails to include an express requirement for the Participants to disseminate to competing consolidators and self-aggregators all of the elements of consolidated market data (e.g., core data,<sup>99</sup> regulatory data, and administrative data) in accordance with the definition of “consolidated market data” in Rule 600(b)(19)<sup>100</sup> and Rule 603(b).<sup>101</sup> The absence of that definition in the Plan would lead to ambiguity about the Participants’ obligations with respect to consolidated market data.

Relatedly, Rule 614(e)(2) requires the Participants to amend the Plan to apply timestamps to all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data. However, because there is no definition of “consolidated market data” in the Plan, there is thus no requirement in the language of the Plan for the Participants to timestamp the data components that constitute consolidated market data,<sup>102</sup> such as the elements of core data<sup>103</sup> (another definition established by the MDI Rules that the Proposed Amendment failed to include in the Plan), which include auction information, odd-lot information, and depth of book data. This is another instance in which the

absence of definitions in the Plan would lead to ambiguity about the Participants’ obligations with respect to consolidated market data.

In addition, as discussed above, under the MDI Rules, the primary listing exchanges are required to collect, calculate, and make available regulatory data to competing consolidators and self-aggregators in accordance with the definition of “regulatory data” in Rule 600(b)(78)(i).<sup>104</sup> The Proposed Amendment, however, does not add the definition of “regulatory data” to the Plan. Therefore, there is no unambiguous requirement in the Plan that the primary listing exchanges perform these functions.

## V. Conclusion

For the reasons set forth above, the Commission finds, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment is inconsistent with the requirements of the Act and the rules and regulations thereunder applicable to an NMS plan amendment.

*It is therefore ordered*, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment (File No. S7–24–89) be, and hereby is, disapproved.

By the Commission.

**J. Matthew DeLesDernier,**  
Deputy Secretary.

[FR Doc. 2022–20827 Filed 9–26–22; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95853; File No. SR–NYSEARCA–2022–61]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Shares of the Breakwave Tanker Shipping ETF

September 21, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on September 13, 2022, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in

Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following under NYSE Arca Rule 8.200–E, Commentary .02 (“Trust Issued Receipts”): Breakwave Tanker Shipping ETF. The proposed change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Rule 8.200–E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: Breakwave Tanker Shipping ETF (the “Fund”).<sup>4</sup>

The Fund will be a series of ETF Managers Group Commodity Trust I (the “Trust”).<sup>5</sup> The Fund and the Trust will

<sup>4</sup> Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

<sup>5</sup> On July 1, 2022, the Trust submitted to the Commission on a confidential basis its draft registration statement on Form S–1 (the “Registration Statement”) under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”). The initial confidential submission and all amendments thereto shall be publicly filed not later than 15 days before (i) the date on which the Trust commences a road show for the Fund, or (ii) the requested

<sup>97</sup> See Notice, *supra* note 7, 86 FR at 67543 (Proposed Amendment at Section III.).

<sup>98</sup> *Id.* at 67549 (Proposed Amendment at Section IX.A.).

<sup>99</sup> Rule 600(b)(21) defines “core data” as (i) The following information with respect to quotations for, and transactions in, NMS stocks: (A) Quotation sizes; (B) Aggregate quotation sizes; (C) Best bid and best offer; (D) National best bid and national best offer; (E) Protected bid and protected offer; (F) Transaction reports; (G) Last sale data; (H) Odd-lot information; (I) Depth of book data; and (J) Auction information. See 17 CFR 242.600(b)(21).

<sup>100</sup> See *supra* note 68 (defining “consolidated market data”).

<sup>101</sup> 17 CFR 242.603(b).

<sup>102</sup> See *supra* note 68 (defining “consolidated market data”).

<sup>103</sup> See *supra* note 99 (defining “core data”).

<sup>104</sup> See *supra* note 77 (defining “regulatory data”). Regulatory data is one element of “consolidated market data,” as defined in Rule 600(b)(19). See *supra* note 68.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.