should be submitted on or before October 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95850; File No. SR–CTA/CQ–2021–02]

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

September 21, 2022.

I. Introduction

On November 5, 2021,[1] the Participants[2] in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and the Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'')[3] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[4] and Rule 608 of Regulation National Market System (''NMS'') thereunder,[5] a proposal (the ''Proposed Amendments'') to amend the Plans to implement the non-fee-related aspects of the Commission's Market Data Infrastructure Rules (''MDI Rules'').[6] The Proposed Amendments were published for comment in the **Federal Register** on November 29, 2021.[7]

On February 24, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[8] to determine whether to approve or disapprove the Proposed Amendments or to approve the Proposed Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.[9] On May 19, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[10] the Commission extended the period within which to conclude proceedings regarding the Proposed Amendments to July 27, 2022,[11] and on July 21, 2022, the Commission further extended the period within which to conclude proceedings regarding the Proposed Amendments to September 25, 2022.[12]

This order disapproves the Proposed Amendments.[13]

II. Overview

Pursuant to Regulation NMS and the Equity Data Plans,[14] 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.''[15] 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.[16] 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.''[17]

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

[17] 17 CFR 200.30–3(a)(12).

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

[2] The ''Participants'' are: Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; 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.

[3] The CTA Plan, pursuant to which markets collect and disseminate last-sale price information for non-Nasdaq-listed securities, is a ''transaction reporting plan'' under Rule 601 of Regulation NMS, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for non-Nasdaq-listed securities, is a ''national market system plan'' under Rule 608 of Regulation NMS, 17 CFR 242.608. *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (Jan. 22, 1980), 45 FR 6521 (Jan. 28, 1980) (permanently authorizing the CQ Plan).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] The ''MDI Rules'' as used in this Order, and as relevant to the Proposed Amendments, 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).

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

[8] 17 CFR 242.608(b)(2)(i).

[9] *See* Securities Exchange Act Release No. 94310 (Feb. 24, 2022), 87 FR 11748 (Mar. 2, 2022) (''OIP''). Comments received in response to the OIP are available at *https://www.sec.gov/comments/sr-ctacq-2021-02/srctacq202102.htm.*

[10] *See* 17 CFR 242.608(b)(2)(i).

[11] *See* Securities Exchange Act Release No. 94951 (May 19, 2022), 87 FR 31920 (May 25, 2022).

[12] *See* Securities Exchange Act Release No. 95345 (July 21, 2022), 87 FR 45136 (July 27, 2022).

[13] The Participants have filed a similar 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 (''UTP Plan''), which the Commission is also disapproving. *See* Securities Exchange Act Release No. 95848 (Sept. 21, 2022). 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 Nos. 95849 (Sept. 21, 2022) (File No. S7–24–89); 95851 (Sept. 21, 2022) (File No. SR–CTA/CQ–2021–03).

[14] 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).

[15] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593 (Jan. 21, 2010).

[16] *See* MDI Rules Release, *supra* note 6.

[17] *Id.* at 18599.

exclusive SIPs that collect, consolidate, and disseminate equity market data under the Equity Data Plans.[18] 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.[19] 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 Amendments were filed by the Participants pursuant to this requirement.[20]

As explained below, however, 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. For example, inconsistent with the decentralized consolidation model and with the requirements of Rule 614(e), the Proposed Amendments: (1) amend the Plans to reflect that they will disseminate *consolidated market data* to competing consolidators and self-aggregators, even though the Plans will not be disseminating any consolidated market data;[21] (2) fail to amend the CTA Plan to require the individual Participants to disseminate data necessary to generate consolidated market data to competing consolidators and self-aggregators;[22] (3) fail to distinguish competing consolidators from vendors and subscribers;[23] (4) fail to amend the Plans to reflect that the Processors will no longer have the responsibility to disseminate regulatory halt notices once the decentralized consolidation model has been implemented;[24] (5) fail to include requirements for the Participants to timestamp every element of data necessary to generate consolidated market data;[25] and (6) fail to amend the Plans to remove references to a single processor.[26]

Because the Proposed Amendments are inconsistent with the MDI Rules, specifically Rule 614(e), the Commission must disapprove the Proposed Amendments under Rule 608(b)(2) of Regulation NMS because it cannot find that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[27]

III. Summary of the Proposed Amendments

The Participants propose to amend the Plans 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).[28]

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 Plans by the Proposed Amendments.[29]

[18] *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.'').

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

[20] The Participants have filed the Proposed Amendments 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 Amendments. 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)).

[21] 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.'').

[22] 17 CFR 242.603(b). *See also* MDI Rules Release, *supra* note 6, 86 FR at 18653.

[23] 17 CFR 242.600(b)(16) (defining ''competing consolidators''). *See, e.g.,* MDI Rules Release, *supra* note 6, 86 FR at 18664–65 (discussing why market data vendors would not be required to register as competing consolidators under the decentralized consolidation model).

[24] *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).

[25] 17 CFR 242.614(e)(2).

[26] 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).

[27] 17 CFR 242.608(b)(2).

[28] 17 CFR 242.614(e).

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

CTA Plan Proposed Amendments

Preface

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

Section I.—Definitions

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

Section IV.—Administration of the CTA Plan

The Proposed Amendments add new Section IV.(e), Plan website Disclosures, requiring CTA to publish on the CTA Plan's website the Primary Listing Exchange for each Eligible Security, and, on a monthly basis, the consolidated market data gross revenues for Eligible Securities as specified by Tape A and Tape B securities. The Participants explain that this addition is intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(i) and (iii).[30]

Section V.—The Processor and Competing Consolidators

The Proposed Amendments amend the title of Section V. to include competing consolidators, such that it is now titled ''The Processor and Competing Consolidators,'' and to add new Section V.(f), Evaluation of Competing Consolidators, to require the Operating Committee to assess the performance of competing consolidators on an annual basis and to submit an annual report to the Commission containing that assessment. The Proposed Amendments require this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these changes are intended to comply with the requirements of Rule 614(e)(3).[31]

In addition, the Proposed Amendments require the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).[32] 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.[33] The Proposed Amendments add the following monthly performance metrics to this section:

(i) Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

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

(iii) System availability statistics, including system up-time percentage and cumulative amount of outage time;

(iv) Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

(v) Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

(A) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;

(B) When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and

(C) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

The Participants explain that they have proposed to amend Section V. to define the monthly performance metrics in accordance with Rule 614(d)(5).[34]

Section VI.—Consolidated Tape

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

In addition, the Proposed Amendments amend Section VI.(c) to delete from the required format the time of the transaction (reported in microseconds) as identified in the Participant's matching engine publication timestamp, and to replace it with the time the last sale price information was generated by the Participant (reported in microseconds). Furthermore, the Proposed Amendments amend Section VI.(c) to add to the required format, with respect to reports to competing consolidators and self-aggregators, the time the Participant made the last sale price information available to competing consolidators and self-aggregators (reported in microseconds). The Participants explain that the proposed references to competing consolidators and self-aggregators and the proposed requirement to report in microseconds the time that a Participant made the last sale price information available to competing consolidators and self-aggregators are intended to comply with Rule 614(e)(1) and (2).[35]

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

The Proposed Amendments also delete Section VI.(g), ITS Transactions, which concerns last sale prices reflecting ITS transactions. The Participants explain that they are proposing to remove this provision because the ITS is obsolete.[36]

Section VIII. Collection and Reporting of Last Sale Data

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

[30] *See id.* at 67800.

[31] *See id.*

[32] 17 CFR 242.614(d)(5).

[33] *See id.*

[34] *See* Notice, *supra* note 7, 86 FR at 67800.

[35] *See id.*

[36] *See id.*

state that each Participant agrees to collect and report to the Processor all last sale price information to be reported by it relating to transactions in Eligible Securities.

The Proposed Amendments also add to the CTA Plan a statement that ''[e]ach Participant further agrees to collect and report to Competing Consolidators and Self-Aggregators all last sale price information to be reported to it related to transactions in Eligible Securities in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person.'' [37] In addition, the Proposed Amendments amend Section VIII.(b), FINRA Responsibility, to add references to competing consolidators and self-aggregators such that the provision states: ''The FINRA shall develop and adopt rules governing the reporting of last sale price information to be reported by its members to both the Processor for inclusion on the consolidated tape and to Competing Consolidators and Self-Aggregators. Such rules shall . . . (ii) be designed to avoid duplicate reporting of transactions on the consolidated tape or to Competing Consolidators and Self Aggregator. . . .'' The Participants explain that these additions are designed to comply with Rule 614(e)(1).[38]

Finally, the Proposed Amendments delete Section VIII.(c), Description of Reporting Procedures, which states that each Participant and each other reporting party has prepared and submitted to CTA and the Commission a description of the procedures by which it collects and reports to the Processor last sale price information reported by it pursuant to the CTA Plan. The Participants explain that this provision is no longer relevant under the MDI Rules.[39]

Section IX.—Receipt and Use of CTA Information

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

The Proposed Amendments also amend Section IX.(a) to include references to competing consolidators and self-aggregators. Proposed Section IX.(a) states that, ''[p]ursuant to fair and reasonable terms and conditions, each CTA network's administrator shall provide for: (i) the dissemination of consolidated market data on terms that are not unreasonably discriminatory to Competing Consolidators, Self-Aggregators, vendors, newspapers, Participants, Participant members and member organizations, and other persons over that network's ticker and over the high speed line; and (ii) the use of consolidated market data by Competing Consolidators, Self-Aggregators, vendors, subscribers, newspapers, Participants, Participant members and member organizations and other persons.'' Additionally, the section now states that each CTA network's Participants will determine the terms and conditions applying in respect of a particular manner of receipt or use of consolidated market data, including whether the manner of receipt or use will require recipients or users to enter into agreements with the CTA network's administrator, and that these determinations will be made in a reasonably uniform manner to subject all parties that receive or use consolidated market data in a particular manner to terms and conditions that are substantially similar.

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

The Participants explain that the proposed revisions to Section IX.(a) are intended to make clear that the current market data contracts regarding the receipt of market data will be applicable to competing consolidators and self-aggregators.[40] The Participants state that the change is consistent with Rule 614(e)(1) and is necessary because competing consolidators and self-aggregators would be receiving and using consolidated market data and should be subject to the same contracts applicable to vendors and subscribers.[41]

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

Section XI.—Operational Matters

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

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

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

[38] *See* Notice, *supra* note 7, 86 FR at 67801.

[39] *See id.*

[40] *See id.*

[41] *See id.*

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

The Participants state that their revisions to Section XI to include references to notifying competing consolidators and self-aggregators in connection with Regulatory and Operational Halts are consistent with Rule 614(e)(1) and would ensure that competing consolidators and self-aggregators are notified of information related to Regulatory and Operational Halts and that competing consolidators can disseminate this information to their customers.[42]

CQ Plan Proposed Amendments

Preface

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

Section I.—Definitions

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

Section IV.—Administration of this CQ Plan

The Proposed Amendments add new Section IV.(d), Plan website Disclosures, requiring the Operating Committee to publish on the CQ Plan's website the Primary Listing Exchange for each Eligible Security and, on a monthly basis, the consolidated market data gross revenues for Eligible Securities as specified by Tape A and Tape B securities. The Participants explain that this addition is intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(i) and (iii).[43]

Section V.—The Processor and Competing Consolidators

The Proposed Amendments amend the title of Section V. to include competing consolidators, such that it is now titled ''The Processor and Competing Consolidators,'' and to add new Section V.(f), Evaluation of Competing Consolidators, to require the Operating Committee to assess the performance of competing consolidators on an annual basis and to submit an annual report to the Commission containing the assessment. The Proposed Amendments require this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these changes are intended to comply with the requirements of Rule 614(e)(3).[44]

In addition, the Proposed Amendments require the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).[45] 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.[46] The Proposed Amendments add the following monthly performance metrics to this section:

(i) Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

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

(iii) System availability statistics, including system up-time percentage and cumulative amount of outage time;

(iv) Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

(v) Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

(A) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;

(B) When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and

(C) When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

Section VI.—Collection and Reporting of Quotation Information

The Proposed Amendments amend Section VI.(a), Responsibilities of Participants, to state, ''Each Participant agrees to collect, and furnish to the Processor in a format acceptable to the Operating Committee, all quotation information required to be made available by such Participant by Rules [sic] 602(b)(1) of Regulation NMS. Each Participant further agrees to collect and report to Competing Consolidators and Self Aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS, including all data necessary to generated consolidated market data.''[47]

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

[42] *See id.*

[43] *See id.*

[44] *See* Notice, *supra* note 7, 86 FR at 67801.

[45] 17 CFR 242.614(d)(5).

[46] *See id.*

[47] Notice, *supra* note 7, 86 FR at 67801. The Participants state that they propose to amend Sections VIII.(a) and (b) of the CQ Plan to add the requirement that each Participant agrees to collect and report to competing consolidators and self-aggregators all quotation information in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person. While the Participants refer to Sections VIII.(a) and (b) of the CQ Plan here, this section reference seems to be an error, and the Participants likely intended to refer instead to Section VI.(a) and (b), as the requirement being discussed is only present in Section VI.(b) of the CQ Plan as it is proposed to be amended. Separately, the amendment to Section VI.(a) lacks the requirement that Participants report quotation 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 Eligible Securities to any person. *See id.* at 67823.

accompanied by the time (reported in microseconds) the Participant made the bid and offer available to competing consolidators and self-aggregators.

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

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

In addition, the Proposed Amendments would amend Section VI.(c), High Speed Line and Market Identifiers, to remove a reference to an ''ITS/CAES BBO'' as excepted from the requirement that each bid or offer with respect to an Eligible Security furnished to the processor by a Participant that is a national securities association shall be accompanied by the symbol identifying the broker or dealer who was reported to the Processor as having made such bid or offer otherwise than on the floor of an exchange. The Participants explain that they propose to remove this reference because references to ITS/CAES are outdated.[48]

The Proposed Amendments also amend Section VI.(e), Unusual Market Conditions, to include references to competing consolidators and self-aggregators and to remove a reference to Rule 602(b)(1)[49] and replace it with a reference to Rules 601(b)(1) and 603(b) of Regulation NMS. The Proposed Amendments also remove a reference to vendors in Section VI.(e).

Finally, the Proposed Amendments delete Section VI.(f), Description of Reporting Procedures, which requires each Participant and each other reporting party to prepare and submit to the Operating Committee and the Processor a description of the procedures by which it intends to comply with its obligations under the CQ Plan. The Participants explain that the provisions of Section VI.(f) are no longer relevant.[50]

Section VII.—Receipt and Use of Quotation Information

In Sections VII.(a), Requirements for Receipt and Use of Information, (b), Approvals of Redisseminators and Terminations of Approvals, and (c), Subscriber Terminations, the Proposed Amendments replace several references to a ''CQ network's quotation information'' with the term ''consolidated market data.''

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

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

The Participants explain that the proposed revisions intend to make clear that the current market data contracts regarding the receipt of market data will be applicable to competing consolidators and self-aggregators.[51] The Participants state that the change is consistent with Rule 614(e)(1) and is necessary, stating that competing consolidators and self-aggregators would be receiving and using consolidated market data and should be subject to the same contracts applicable to vendors and subscribers.[52]

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

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

[48] *See* Notice, *supra* note 7, 86 FR at 67801.

[49] *See id.* at 67824.

[50] *See id.* at 67801.

[51] *See id.*

[52] *See id.*

mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[53] The Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[54] 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.[55]

For the reasons discussed below, the Commission does not find that the Participants have met their burden to demonstrate that the Proposed Amendments are consistent with the Act.[56] Specifically, the Commission does not find that the Participants have demonstrated that the Proposed Amendments are consistent with either Rule 614(e) of Regulation NMS or Rule 608 of Regulation NMS. The Proposed Amendments clearly do not comply with the requirements of the MDI Rules.[57] Accordingly, the Commission cannot make a finding that the Proposed Amendments are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[58]

B. The Requirements of the MDI Rules Regarding the Proposed Amendments

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.[59] 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,[60] 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.[61]

Pursuant to Rule 614(e)(1) of Regulation NMS, and as discussed in the MDI Rules Release, the Participants to the Plans were required to file an amendment to 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 national securities exchange and national securities association participants to competing consolidators and self-aggregators.[62]

C. Whether the Proposed Amendments Are Consistent With Rule 614(e)(1) of Regulation NMS

1. Consistency With the Decentralized Consolidation Model

Two commenters recommend disapproval of the Proposed Amendments because the amendments do not properly conform the Plans to the MDI Rules in that the amendments fail to accurately reflect the decentralized consolidation model.[63] 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.''[64] The commenter also states that the Proposed Amendments did not include any revisions to the exhibits, stating that Exhibit A to the current version of the CTA Plan (''Restated Articles of Association of Consolidated Tape Association'') ''does not reflect the shifting purpose of the Plan to provide underlying content for the creation of consolidated market data,''[65] and argues that the Proposed Amendments must ''[a]cknowledge that the Plan is no longer responsible for the creation, distribution and pricing of consolidated market data.''[66]

This commenter further argues that ''[t]he language of the Plan Amendments that states that competing consolidators and self-aggregators will be receiving and using consolidated market data is inconsistent with their role in actually generating consolidated market data based on the receipt of NMS information,''[67] and reiterates that only competing consolidators would externally distribute and charge for consolidated market data and that the Plans would only be selling underlying content.[68] This commenter also disagrees with what it describes as the Proposed Amendments' treatment of competing consolidators as vendors.[69] The commenter states that ''[s]ubjecting competing consolidators to the same fees and contractual requirements as data vendors and subscribers that receive consolidated market data from the exclusive SIP fails to recognize that competing consolidators are SIPs and not similarly situated to today's data vendors.''[70] The commenter further states that competing consolidators will take on added risk and expense, ''including the costs associated with generating consolidated market data, disclosing operational and performance metrics, registering with the SEC, and ongoing compliance with Rule 614.''[71]

Another commenter also argues that the Proposed Amendments' treatment of competing consolidators as market data vendors contravenes the MDI Rules.[72] This commenter argues that the

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[53] 17 CFR 242.608(b)(2).

[54] *Id.*

[55] 17 CFR 201.700(b)(3)(ii).

[56] 17 CFR 201.700(b)(3).

[57] As discussed below, the Proposed Amendments do 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).

[58] 17 CFR 242.608(b)(2).

[59] *See* MDI Rules Release, *supra* note 6, 86 FR at 18637.

[60] *See id.* at 18700.

[61] *Id.* at 18701.

[62] *See id.* at 18700–01.

[63] *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'').

[64] MayStreet Letter II, *supra* note 63, at 2.

[65] *Id.* at 8.

[66] *Id.* at 4–5.

[67] MayStreet Letter I, *supra* note 63, at 5.

[68] *See* MayStreet Letter II, *supra* note 63, at 4–5.

[69] *See* MayStreet Letter I, *supra* note 63, at 2, 4–5 (explaining that competing consolidators are generating and distributing consolidated market data for the first time, unlike vendors who redistribute consolidated market data).

[70] MayStreet Letter I, *supra* note 63, at 3–4; *see id.* at 1 (stating that competing consolidators should be treated as the replacements to the exclusive SIPs to meet the requirements of the MDI Rules).

[71] *Id.* at 5.

[72] *See* SIFMA Letter I, *supra* note 63, at 8. *See also id.* at 4–5; 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, at 2–3 (Apr. 27, 2022) (''SIFMA Letter II'').

Commission's MDI Rules replace the exclusive SIPs with competing consolidators and that competing consolidators should therefore be ''treated in the same manner as the exclusive SIPs are today.'' [73] This commenter states that the Participants are, through the Proposed Amendments, ''acting in an unreasonably discriminatory manner, effectively disregarding these Exchange Act mandates in addition to the Commission's directive in the Infrastructure Rule.'' [74]

One commenter argues that the sections of the Plans that discuss vendors' and subscribers' contractual relationships with the Plans should be ''removed or significantly altered to reflect that the Plans no longer have 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.'' [75] 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 Plans.[76] The commenter also states that contracts applicable to vendors would be inappropriate for competing consolidators because, unlike vendors, competing consolidators would be receiving data underlying consolidated market data from the exchanges, not consolidated market data from the exclusive SIPs.[77] This commenter also objects to the continued references to subscribers and vendors in the Plans 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.'' [78]

One commenter objects to the retention of the concept of a single processor in the Proposed Amendments.[79] 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.'' [80] This commenter requests clarification of how the CTA and CQ Plans will operate during the parallel operation period, such as the inclusion in the Plans of objective criteria for ending the parallel period and the addition of a section devoted to competing consolidators and self-aggregators to help distinguish between their obligations and the obligations of the exclusive SIPs during the parallel period.[81] The commenter recommends that the Proposed Amendments 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 commenter also suggests specific modifications to CTA Plan Sections V. and VI. to make clear that the functions of the Processor apply only during the parallel operation period and to embed in the body of the Plans the contractual terms regarding the provision of capacity forecasts to competing consolidators, data correction requirements, and indemnification (of competing consolidators from Participants) from CQ Plan Exhibit A and CTA Plan Exhibit B.[82]

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.[83]

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 Amendments) until the submission of a further amendment after the parallel operation period is consistent with the MDI Rules Release.[84]

The Commission agrees with the commenters who argue that the Proposed Amendments do not properly conform the Plans 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,[85] and competing consolidators and self-aggregators will then generate consolidated market data, rather than receive consolidated market data from the Plans.[86] The Participants, however, propose to amend the Plans to provide for the dissemination of consolidated data to competing consolidators and self-aggregators.[87] 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,[88] calculate and

[73] SIFMA Letter I, *supra* note 63, at 8.

[74] *Id.* at 8.

[75] MayStreet Letter I, *supra* note 63, at 3.

[76] *Id.* at 3. *See also* MayStreet Letter II, *supra* note 63 at 9 (arguing that, since the Plans would only be selling underlying content to competing consolidators and self-aggregators, vendor and subscriber agreements should not be required).

[77] *See* MayStreet Letter I, *supra* note 63, at 5.

[78] *Id.* at 3.

[79] *See* SIFMA Letter I, *supra* note 63, at 8.

[80] MayStreet Letter II, *supra* note 63, at 8.

[81] *See id.* at 7–8.

[82] *See id.*

[83] 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'').

[84] *See id.* at 1–2.

[85] *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).

[86] *See* Rule 614(d)(1)–(3). 17 CFR 242.614(d)(1)–(3).

[87] The Participants propose to amend the CTA Plan to require the CTA network administrator to provide for the dissemination of consolidated market data to competing consolidators and self-aggregators and to provide for the use of that consolidated market data by competing consolidators and self-aggregators. *See* Notice, *supra* note 7, 86 FR at 67811 (CTA Plan Proposed Amendment at Section IX.(a)). The Participants also propose to amend the CQ Plan to require each network's administrator to provide for the dissemination of each CQ network's consolidated quotation information on terms that are not unreasonably discriminatory to competing consolidators and self-aggregators, and to provide for the use of that CQ network's consolidated quotation information by competing consolidators and self-aggregators. *See id.* at 67824 (CQ Plan Proposed Amendment at Section VII.(a)). *See also* Consolidated Quotation System, Multicast Output Binary Specification, 8 (Jan. 26. 2021), *available at https://www.ctaplan.com/publicdocs/ctaplan/CQS_Pillar_Output_Specification.pdf.* The Participants also state that, for both the CTA Plan and the CQ Plan, competing consolidators and self-aggregators will be receiving and using consolidated market data. *See* Notice, *supra* note 7, 86 FR at 67801 (describing the Proposed Amendments).

[88] *See* Rule 614(d)(1), 17 CFR 242.614(d)(1).

generate a consolidated market data product,[89] and make the consolidated market data product available to subscribers.[90] 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.[91] 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.'' [92] Accordingly, the Plans' 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.[93] Therefore, the Proposed Amendments impermissibly provide for the dissemination by the Plans 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, while Rule 603(b) requires national securities exchanges and associations on which an NMS stock is traded to make available to all competing consolidators and self-aggregators their information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data,[94] the Proposed Amendments do not add this requirement to the CTA Plan. Instead, the Proposed Amendments add to the CTA Plan a requirement that each Participant agrees to collect and report to competing consolidators and self-aggregators all ''last sale price information''—not *all data necessary to generate consolidated market data.*[95] Last sale price information is but one component of ''core data'' adopted by the MDI Rules, and core data is itself only one component of consolidated market data.[96] Rule 603(b) requires the Participants to make available all data necessary to generate consolidated market data to competing consolidators and self-aggregators,[97] not just last sale price information.

Third, under the Proposed Amendments, the Plans would treat competing consolidators in the same manner as vendors and subscribers with respect to market data contracts.[98] Under Rule 600(b)(16), a competing consolidator is, by definition, either a SIP required to register under Rule 614 or an SRO.[99] The Participants, however, would apply current market data contracts for vendors and subscribers to competing consolidators and self-aggregators,[100] arguing that this ''is necessary since the Competing Consolidators and Self-Aggregators will [sic] receiving and using consolidated market data, and any such party should be subject to the same contracts applicable to vendors and subscribers.'' [101]

The Commission agrees with the commenters who argue that applying contract provisions for vendors and subscribers to competing consolidators is inconsistent with the MDI Rules,[102] because unlike vendors and subscribers, competing consolidators will not receive consolidated market data from the Plans. Instead, as replacements for the exclusive SIPs, competing consolidators will generate consolidated market data themselves and disseminate it to subscribers. In the MDI Rules Release, the Commission clearly distinguished competing consolidators from vendors. For example, the Commission explained that only entities that receive information with respect to quotations for and transactions in NMS stocks directly from an SRO pursuant to an effective national market systems plan and that generate consolidated market data products for dissemination must register as competing consolidators.[103] By comparison, the Commission stated, ''[a] market data vendor that purchases proprietary data feeds from an SRO or SROs, or that purchases data from a competing consolidator, and aggregates and disseminates such data to its customers, will not be required to register as a competing consolidator,'' [104] but ''vendors that do not register as competing consolidators would not be permitted to purchase the NMS information necessary to generate consolidated market data from the SROs at prices established by an effective national market system plan.'' [105]

Fourth, the Proposed Amendments are 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).[106]

[89] *See* Rule 614(d)(2), 17 CFR 242.614(d)(2).

[90] *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).

[91] 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.*

[92] 17 CFR 242.603(b).

[93] *See* MDI Rules Release, *supra* note 6, 86 FR at 18604, 18681.

[94] 17 CFR 242.603(b).

[95] *See* Notice, *supra* note 7, 86 FR at 67810 (CTA Plan Proposed Amendment at Section VIII.(a)). As discussed above, Rule 600(b)(19) 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). 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).

[96] *See id.*

[97] 17 CFR 242.603(b).

[98] *See* SIFMA Letter I, *supra* note 63, at 4–5, 8; SIFMA Letter II, *supra* note 72, at 2–3; MayStreet Letter I, *supra* note 63, at 2, 4–5.

[99] 17 CFR 242.600(b)(16).

[100] *See* Notice, *supra* note 7, 86 FR at 67811–12 (CTA Plan Proposed Amendment at Section IX.; *id.* at 67824–25 (CQ Plan Proposed Amendment at Section VII.).

[101] Notice, *supra* note 7, 86 FR at 67801.

[102] *See* SIFMA Letter I, *supra* note 63, at 4–5, 8; MayStreet Letter I, *supra* note 63, at 2, 4–5. *See also* SIFMA Letter II, *supra* note 72, at 2–3 (objecting to the Proposed Fee Amendments because they propose to charge redistribution fees to competing consolidators like market data vendors).

[103] *See* MDI Rules Release, *supra* note 6, 86 FR at 18665.

[104] *Id.*

[105] *Id.*

[106] 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

The Proposed Amendments, however, do not reflect this requirement with respect to regulatory data. For example, the Proposed Amendments fail to amend the CTA and CQ Plans to reflect that the Processors will no longer have the responsibility to disseminate regulatory halt notices once the decentralized consolidation model has been implemented.

The Proposed Amendments also do 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.[107] While the Proposed Amendment to the CTA Plan requires that a Participant that reports last sale price information to competing consolidators and self-aggregators timestamp in microseconds the time the Participant generated the last sale price information and made the last sale price information available to those entities,[108] this proposed timestamp provision does not satisfy the requirements of Rule 614(e)(2), because it applies only to last sale price information, not to ''all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data'' as required under the rule. And while the Proposed Amendment to the CQ Plan amends the section governing the collection and reporting 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 available to competing consolidators and self-aggregators,[109] 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.'' [110] Additionally, the Proposed Amendment to the CQ Plan states that each bid and offer furnished to competing consolidators and self-aggregators shall be accompanied by the information required by Rule 602(b)(1) or Rule 603(b),[111] but it 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 Plans, as amended by the Proposed Amendments, comply with the MDI Rules Release's implementation schedule for parallel operation of the exclusive SIPs and the competing consolidators.[112] Rule 614(e)(1) requires the Participants to amend 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, *i.e.,* to conform the Plans to reflect the decentralized consolidation model.[113] However, the Proposed Amendments are not consistent with the decentralized consolidation model and do 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 Plans ''to effectuate a cessation of the operations of the exclusive SIPs,'' [114] the current Proposed Amendments were required to 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, which, as discussed above, they have failed to do. Moreover, the failure of the Participants to explain in the Proposed Amendments how the Plans 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.[115]

Because the Proposed Amendments clearly do not comply with the plain terms of the MDI Rules [116] and are 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 Amendments are 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.[117]

2. Technical Comments

One commenter criticizes the failure of the Proposed Amendments to incorporate the definitions of the MDI Rules.[118] 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.'' [119] Specifically, this commenter suggests that the Proposed Amendments add definitions of the following terms: competing consolidator, self-aggregator, consolidated market data, content

''consolidated market data,'' as defined in Rule 600(b)(19). *See supra* note 85.

[107] 17 CFR 242.614(e)(2).

[108] *See* Notice, *supra* note 7, 86 FR at 67808 (CTA Plan Proposed Amendment at Section VI.(c)).

[109] *See id.* at 67823 (CQ Plan Proposed Amendment at Section VI.(a)).

[110] 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.

[111] *See* Notice, *supra* note 7, 86 FR at 67823 (CQ Plan Proposed Amendment at Section VI.(a)).

[112] *See* McGonigle Letter, *supra* note 83, at 1–2. *See also* MDI Rules Release, *supra* note 6, 86 FR at 18700–01 (discussing the parallel operation implementation schedule).

[113] 17 CFR 242.614(e)(1).

[114] MDI Rules Release, *supra* note 6, 86 FR at 18701.

[115] *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).

[116] 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).

[117] *See* 17 CFR 242.608(b)(2).

[118] *See* MayStreet Letter II, *supra* note 63, at 5. This commenter also recommends that the Commission issue guidance to the Participants to aid in revising the Proposed Amendments. *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 Plans.

[119] *Id.* at 5.

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 Plans.[120] This commenter also suggests updating the existing definitions of Processor, System, and Consolidated Quotation System, and clarifying the existing definitions of Subscriber, Vendor, and the CQ Network's Quotation Information to reflect the decentralized consolidation model.[121]

This commenter also describes several other technical criticisms of the Proposed Amendments. The commenter states that the Proposed Amendments should have removed the addition of a new SRO participant from the Plans' ministerial amendment list,[122] arguing that competing consolidators and self-aggregators would need more time to update their systems to handle the new Participant's data.[123] The commenter also states that the Proposed Amendments need to support the timestamps required by the MDI Rules to the microsecond,[124] and that validation procedures to be used by competing consolidators need to be added to the Plans to describe the Participants' and the competing consolidator's obligations.[125] The commenter further suggests that the Plans' capacity planning process needs to apply to competing consolidators and self-aggregators so that these entities can meet SRO-expected capacity requirements.[126] Finally, the commenter states that the Plans' conflict of interest and confidentiality provisions need to apply to competing consolidators since they will be replacing the exclusive SIPs.[127]

The Commission agrees with the commenter that the failure to include the definitions established by the MDI Rules contributes to ambiguity within the Plans. In lieu of incorporating the MDI Rules' definitions, the Proposed Amendments add a statement to each Plan that ''[t]erms used in this plan have the same meaning as the terms defined in Rule 600(b) under the Act.'' [128] This creates ambiguity because the Proposed Amendments use the terms adopted by the MDI Rules but do not include definitions of those terms, so their applicability and the obligations they create are unclear or are not reflected in the Proposed Amendments. For example, the Proposed Amendment to the CQ Plan adds a requirement for the collection and reporting 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.'' [129] However, the Proposed Amendments do not define ''consolidated market data'' or even the data necessary to generate it. The Plans thus fail 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,[130] regulatory data, and administrative data) in accordance with the definition of ''consolidated market data'' in Rule 600(b)(19) [131] and Rule 603(b).[132] The absence of that definition in the Plans, especially in light of the instances described above in which the Proposed Amendments have failed to reflect the full scope of data required to be made available to competing consolidators and self-aggregators,[133] 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 Plans 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 Plans, there is thus no requirement in the language of the Plans for the Participants to timestamp the data components that constitute consolidated market data,[134] such as the elements of core data [135] (another definition established by the MDI Rules that the Proposed Amendments failed to include in the Plans), which include auction information, odd-lot information, and depth of book data. This is another instance in which the absence of definitions in the Plans 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).[136] The Proposed Amendments, however, do not add the definition of ''regulatory data'' to the Plans. Therefore, there is no unambiguous requirement in the Plans that the primary listing exchanges perform these functions.

Further, the CTA Plan Proposed Amendment would require that the CTA network enter into agreements with vendors and other parties that redisseminate consolidated market data to others,[137] without including the definition of ''consolidated market data.'' Also, as stated by a commenter,[138] the MDI Rules define a competing consolidator as a securities information processor, but the Proposed Amendments fail to add the definition of ''competing consolidator'' the Plans. The Proposed Amendments also fail to treat competing consolidators as securities information processors, instead treating them, incorrectly, as vendors and subscribers.[139] The failure to incorporate into the Plans the full text of the definitions established by the MDI Rules thus increases the likelihood of ambiguity.

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 Amendments are 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

[120] *See id.* at 5–6.

[121] *See id.* at 6.

[122] A ''ministerial amendment'' permits an amendment to the Plans that is submitted by the Chairman of the CTA Plan and the Chairman of the CQ Operating Committee with less than 48 hours' advance notice to the Participants. *See* Notice, *supra* note 7, 86 FR at 67805 (CTA Plan Proposed Amendment at Section IV.(b)); *id.* at 67820 (CQ Plan Proposed Amendment at Section IV.(c)).

[123] *See* MayStreet Letter II, *supra* note 63, at 6–7.

[124] *See id.* at 5.

[125] *See* MayStreet Letter I, *supra* note 63, at 4; MayStreet Letter II, *supra* note 63, at 8.

[126] *See* MayStreet Letter II, *supra* note 63, at 10.

[127] *See id.* at 7.

[128] Notice, *supra* note 7, 86 FR at 67802 (CTA Plan Proposed Amendment at Preface); *id.* at 67818 (CQ Plan Proposed Amendment at Preface).

[129] Notice, *supra* note 7, 86 FR at 67823 (CQ Plan Proposed Amendment at Section VI.(a)).

[130] *See supra* note 95 (defining ''core data'').

[131] *See id.* (defining ''consolidated market data'').

[132] 17 CFR 242.603(b). As noted above, the CTA Plan Proposed Amendment does not add a requirement for the Participants to collect and report to competing consolidators and self-aggregators all data necessary to generate consolidated market data. *See supra* notes 94–97 and accompanying text.

[133] *See supra* notes 94–97 and accompanying text.

[134] *See supra* note 95 (defining ''consolidated market data'').

[135] *See id.* (defining ''core data'').

[136] *See supra* note 106 (defining ''regulatory data''). Regulatory data is one element of ''consolidated market data,'' as defined in Rule 600(b)(19). *See supra* note 95.

[137] *See* Notice, *supra* note 7, 86 FR at 67811 (CTA Plan Proposed Amendment at Section IX.(a)).

[138] *See supra* note 119.

[139] *See supra* notes 98–105 and accompanying text. *See also supra* note 23.

608(b)(2) thereunder, that the Proposed Amendments (File No. SR–CTA/CQ–2021–02) be, and hereby are, disapproved.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95854; File No. SR–MRX–2022–10]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Relating to Single-Leg and Complex Orders in Connection With a Technology Migration

September 21, 2022.

I. Introduction

On July 25, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to single-leg and Complex Orders in connection with a technology migration. The proposed rule change was published for comment in the **Federal Register** on July 29, 2022.[3] The Commission received no comments regarding the proposal. On September 8, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission extended the time for Commission action on the proposal until October 27, 2022.[5] On September 9, 2022, MRX filed Amendment No. 1 to the proposal, which replaces and supersedes the original filing in its entirety.[6] The Commission is publishing this notice to solicit comment on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

1. Purpose

In connection with a technology migration to an enhanced Nasdaq, Inc. (''Nasdaq'') functionality which will result in higher performance, scalability, and more robust architecture, the Exchange intends to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. Also, the Exchange intends to remove certain functionality. Specifically, the following sections would be amended: Options 3, Section 7, Types of Orders and Order and Quote Protocols, Options 3, Section 10, Priority of Quotes and Orders; Options 3, Section 11, Auction Mechanisms; Options 3, Section 12, Crossing Orders, Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions; Options 3, Section 14, Complex Orders; and Options 3, Section 16, Complex Risk Protections. Each change will be described below.

Legging Order

The Exchange proposes to amend Options 3, Section 7(k)(1) to add a provision which states that a Legging Order [7] will not be generated during a Posting Period, as described in detail below, in progress on the same side in the series pursuant to Options 3, Section 15 regarding Acceptable Trade Range (''ATR''). A Legging Order would not be generated because it would no longer be at the Exchange's displayed best bid or offer, therefore, generating a Legging Order during a Posting Period in progress, on the same side in the series, would lead to its immediate removal, making it superfluous to have been generated.

ATR is a risk protection, that sets dynamic boundaries within which quotes and orders may trade.[8] It is designed to guard the System [9] from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by this risk protection. The Exchange recently amended ATR to adopt an iterative process wherein an order/quote that reaches its ATR boundary is paused for a brief period of time to allow more liquidity to be collected, before the order/quote is automatically re-priced and a new ATR is calculated.[10]

Specifically, SR–MRX–2022–16 amended current Options 3, Section 15(a)(2)(A)(iii) to adopt an iterative process wherein an order or quote reaches the outer limit of the ATR (''Threshold Price'') without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow the market to refresh and determine whether or not more liquidity will become available (on the Exchange or any other exchange if the order is designated as routable) within the posted price of the order or quote before moving on to a new Threshold Price. With this change, upon posting, either the current Threshold Price of the order/quote or an updated NBB for buy orders/quotes or the NBO for sell orders/quotes (whichever is higher for a buy order/quote or lower for a sell order/quote) would become the reference price for calculating a new ATR. If the order/quote remains unexecuted after the Posting Period, a new ATR will be calculated and the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95363 (July 25, 2022), 87 FR 45814 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 95704 (September 8, 2022), 87 FR 56457 (September 14, 2022).

[6] Amendment No. 1 modifies the original proposal to (1) amend MRX Options 3, Sections 7, 11, 12, and 13 to add a paragraph at the beginning of each of the rules indicating that certain orders that require stock-tied functionality will be implemented at a later date as part of the technology migration; (2) add references to the ''internal BBO'' to the Qualified Contingent Cross and Complex Qualified Contingent Cross provisions in MRX Options 3, Sections 12(c) and (d), and to the proposed Complex Preferenced Order provisions in MRX Options 3, Section 14(b)(19), to conform with the concept of re-pricing at an ''internal BBO,'' as provided in MRX Options 3, Section 5(c) and (d); (3) amend MRX Options 3, Section 13(d)(4) to replace an incorrect reference to the ''Crossing Transaction'' with a reference to the ''exposure period;'' and (4) replace references to File No. SR–MRX–2022–5P with references to File No. SR–MRX–2022–16, to reflect the immediate effectiveness of File No. SR–MRX–2022–16. *See* Securities Exchange Act Release No. 95807 (September 16, 2022) (File No. SR–MRX–2022–16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) (''SR–MRX–2022–16''). Amendment No. 1 is available at *https://www.sec.gov/comments/sr-mrx-2022-10/srmrx202210-20138852-308557.pdf.*

[7] A Legging Order is a limit order on the regular limit order book that represents one side of a Complex Options Order that is to buy or sell an equal quantity of two options series resting on the Exchange's Complex Order Book. *See* Options 3, Section 7(k).

[8] *See* Options 3, Section 15(a)(2)(A).

[9] The term ''System'' means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. See MRX Options 1, Section 1(a)(49).

[10] *See* SR–MRX–2022–16. SR–MRX–2022–16 proposed an iterative process for ATR wherein the Exchange will attempt to execute interest that exceeds the outer limit of the ATR for a brief period of time while that interest is automatically re-priced as described herein. The Exchange also updated the reference price definition to provide that upon receipt of a new order or quote, the reference price will now be the better of the NBB or internal best bid for sell orders/quotes and the better of the NBO or internal best offer for buy orders/quotes or the last price at which the order/quote is posted, whichever is higher for a buy order/quote or lower for a sell order/quote. The additions of ''internal BBO'' were consistent with the re-pricing of orders. SR–MRX–2022–16 is effective, but not yet operative. SR–MRX–2022–16 would be implemented as part of the same technology migration as the changes proposed herein.