

January 26, 2024

Submitted electronically

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: File No. 4-757; Securities Exchange Act Release No. 34-9827 – Joint Industry Plan;  
Notice of Filing of a National Market System Plan Regarding Consolidated Equity  
Market Data

Cboe Global Markets Inc. (“Cboe”)<sup>1</sup> appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the “SEC” or the “Commission”) regarding the national market system (“NMS”) plan (the “Plan”)<sup>2</sup> submitted by the exchanges<sup>3</sup> and the Financial Industry Regulatory Authority (“FINRA”) (each an, “SRO”, and collectively, the “SROs”) on October 23, 2023, as required by the Commission’s September 1, 2023, Amended Order.<sup>4</sup>

While Cboe participated in the drafting and submission of the Plan solely to comply with the requirements of the Amended Order, Cboe believes that the Plan is fundamentally flawed because its allocation of votes violates the Securities Exchange Act of 1934 and is arbitrary and capricious under the Administrative Procedure Act (“APA”).<sup>5</sup> Specifically, the proposed Plan violates the

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<sup>1</sup> Hereinafter, all references to Cboe are in reference only to Cboe Global Markets, Inc.’s U.S. equities exchanges that trade National Market System stocks: BZX Exchange, Inc., BYX Exchange, Inc., EDGA Exchange, Inc., and EDGX Exchange, Inc.

<sup>2</sup> See Securities Exchange Act Release No. 99403 (January 19, 2024), File No. 4-757 (“Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data”).

<sup>3</sup> Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Investors Exchange LLC, Long Term Stock Exchange, Inc., MEMX LLC, MIAX Pearl LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, LLC, Nasdaq Stock Market, LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National Inc.

<sup>4</sup> See Securities Exchange Act Release No. 98271 (September 1, 2023), 88 FR 61630 (September 7, 2023) (“Amended Order Directing the Exchange and the Financial Industry Regulatory Authority, Inc., to File a National Market System Plan Regarding Consolidated Equity Market Data) (hereinafter, the “Amended Order”).

<sup>5</sup> 5 U.S.C. §§ 551-559.

APA because it lacks a rational basis and both treats the Cboe SRO Group<sup>6</sup> the same as dissimilarly situated Non-Affiliated Exchanges,<sup>7</sup> while also treating the Cboe SRO Group differently from similarly situated NYSE and Nasdaq SRO Groups. Accordingly, the Commission should order that the Plan be modified to adopt a voting framework that allocates votes in a manner reasonably tied to each SRO's overall significance in the marketplace. Below, Cboe suggests an alternative framework that cures the Commission's flawed approach by tying voting power to each self-regulatory organization's consolidated equity market share.

### **Executive Summary**

- The proposed Plan's allocation of voting power amongst SRO Groups and Non-Affiliated SROs is arbitrary and capricious under the APA because the Commission's mandated allocation of voting power lacks any rational connection to Cboe's consolidated equity market share. As discussed below, the Commission allocates votes amongst the SROs based on an arbitrary threshold of consolidated equity market share of 15% that artificially distorts downward certain exchange's market share, simply to favor the Non-Affiliated exchanges and ensure that the SRO Groups do not possess a majority of voting power. While the Commission's underlying goals may have merit, it cannot establish a voting threshold unsupported by a reasonable analysis.
- Cboe urges the Commission to modify the proposed Plan to mandate the adoption of Cboe's proposed voting framework, which (1) allocates votes in a more rational manner, (2) logically accounts for consolidated equity market share, and (3) better recognizes Cboe's significant contribution of consolidated equity volume to the consolidated tape. As discussed more fully below, Cboe's proposal includes the following components:
  - A three-tiered voting framework in which SRO Groups and Non-Affiliated SROs would receive either 1, 2, or 3 votes based on their consolidated equity market share. Votes would be allocated to SRO Groups or Non-Affiliated SROs as follows: < 5% consolidated equity market share = 1 vote; 5%-15% consolidated equity market share = 2 votes; and >15% consolidated equity market share = 3 votes.
  - A 2/3 majority of votes requirement for Plan action;

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<sup>6</sup> "SRO Group" means a group of Members that are Affiliates. See proposed Limited Liability Company Agreement of CT Plan LLC, at A-8, available at: <https://www.sec.gov/files/rules/sro/nms/2024/34-99403.pdf>.

<sup>7</sup> "Non-Affiliated SRO" means a Member that is not affiliated with any other Member. See Limited Liability Company Agreement of CT Plan LLC, at A-6, available at: <https://www.sec.gov/files/rules/sro/nms/2024/34-99403.pdf>.

- A modified consolidated equity market share calculation that accounts not just for trades but also quotations, which are essential to transparent markets and fostering price discovery. The Transaction Reporting Facility (“TRF”)<sup>8</sup> contributes only trades, while exchanges contribute both trades and quotes, and any calculation of consolidated equity market share should recognize this distinction; and
  - A requirement that an exchange be entitled to a vote only if it operates a trading venue (with FINRA receiving a vote as a non-exchange).
- Cboe’s proposed voting framework would (1) be more representative of consolidated equity market share for each SRO or SRO Group, and allocate votes accordingly, while providing meaningful opportunity for the Non-Affiliated SROs to obtain an additional vote if they reach the more attainable 5% threshold; and (2) help drive consensus amongst the SRO Groups and Non-Affiliated SROs.

### **The Mandated Plan is Arbitrary and Capricious**

As mandated by the Commission, the Plan proposes a voting framework whereby each Voting Representative<sup>9</sup> is authorized to cast one vote on behalf of their SRO Group or Non-Affiliated SRO that s/he represents. However, a Voting Representative representing an SRO Group or Non-Affiliated SRO whose combined market center(s) have consolidated equity market share of more than 15% during four of the six calendar months preceding an Operating Committee vote shall be authorized to cast two votes. Under this construct and using the formula for calculating market share that is in the mandated Plan, Cboe and each of the Non-Affiliated exchanges would likely receive one vote, while the NYSE and Nasdaq SRO Groups would each receive two votes.

This mandated allocation of votes is arbitrary and capricious and, if approved, would violate the APA. As demonstrated below, the Commission’s allocation of votes lacks a rational connection to Cboe’s consolidated equity market share, and is inconsistent with the Commission’s statement that SRO voting should reflect the “significance within the national market system of those exchanges that, in their roles as SROs, oversee trading activity that generates a significant amount

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<sup>8</sup> The TRF is a FINRA facility through which FINRA members report transactions in NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS, effected otherwise than on an exchange.

<sup>9</sup> “Voting Representative” means an individual designated by each SRO Group and each Non-Affiliated SRO pursuant to Section 4.2(a) to vote on behalf of such SRO Group or such Non-Affiliated SRO. See proposed Limited Liability Company Agreement of CT Plan LLC, at A-9, available at: <https://www.sec.gov/files/rules/sro/nms/2024/34-99403.pdf>.

of equity market data.”<sup>10</sup> The proposed allocation of votes unjustifiably equates Cboe’s significance to the market, and its oversight of trading activity and contribution of equity market data, to that of the smaller, Non-Affiliated SROs. This is illogical, and the only basis for this action seems to be the Commission’s desire to predetermine a result that favors the much smaller, Non-Affiliated SROs in order to prevent the existing SRO Groups (*i.e.*, Cboe, NYSE and Nasdaq) from possessing a majority of voting power.<sup>11</sup> Indeed, such favoritism has an unjustifiable negative impact on Cboe, and may ultimately contradict the Commission’s own logic that each SRO’s voting power should reflect their significance in the national market system, by enabling smaller exchanges with lesser market share to have undeserved and disproportionate voting power.

Moreover, the Commission’s use of a threshold of 15% consolidated equity market share is unreasonable and does not justify allocating Cboe one vote. An examination of consolidated equity market share calculated by Cboe using the formula<sup>12</sup> presently mandated by the Commission— *i.e.*, the average daily dollar equity trading volume of eligible securities of an SRO Group or Non-Affiliated SRO as a percentage of the average daily dollar equity trading volume of all of the SROs Groups and Non-Affiliated SROs, as reported to the CQ, CTA, and UTP Plans – reveals how unreasonable it is to equate Cboe’s market stature with that of the smaller, independent exchanges. Consider the chart and observations below, which illustrate how a simple analysis of equity market share fails to justify the Commission’s mandated allocation of voting power.

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<sup>10</sup> See Securities Exchange Act Release No. 92586 (August 6, 2021), 86 FR 44142 (August 11, 2021) (“Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data”), at 44164.

<sup>11</sup> See Securities Exchange Act Release No. 87906 (January 8, 2020), 85 FR 2164 (January 14, 2020) (“Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data”), at 2174.

<sup>12</sup> Supra note 10, at 44213.

SRO Groups	2021 Full Year	2022 Full Year	2023 Full Year	2021	2022	2023
NYSE	30,141,808,022,543	30,048,607,082,558	26,487,792,441,969	21.2%	20.9%	20.6%
Nasdaq	30,182,229,650,979	29,399,385,822,072	24,975,760,649,539	21.2%	20.4%	19.4%
Cboe	21,009,350,387,384	19,030,329,719,545	15,030,132,621,825	14.8%	13.2%	11.7%
<b>Subtotal</b>	<b>81,333,388,060,906</b>	<b>78,478,322,624,175</b>	<b>66,493,685,713,333</b>	<b>57.2%</b>	<b>54.6%</b>	<b>51.7%</b>
<b>Non-Affiliated SROS</b>						
MEMX	2,390,393,533,984	4,010,953,770,177	3,513,158,829,159	1.7%	2.8%	2.7%
IEX	4,483,706,502,047	4,713,730,276,529	3,325,310,821,750	3.2%	3.3%	2.6%
MIAX	679,828,698,885	1,217,739,592,966	1,566,392,596,487	0.5%	0.8%	1.2%
LTSE	437,367,499	2,752,708,956	3,176,781,255	0.0%	0.0%	0.0%
<b>Subtotal</b>	<b>7,554,366,102,415</b>	<b>9,945,176,348,628</b>	<b>8,408,039,028,651</b>	<b>5.3%</b>	<b>6.9%</b>	<b>6.5%</b>
TRF	53,407,789,352,771	55,422,022,987,930	53,757,534,755,930	37.5%	38.5%	41.8%
<b>Total</b>	<b>142,295,543,516,092</b>	<b>143,845,521,960,733</b>	<b>128,659,259,497,913</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

The following statistical facts are noteworthy:

- Taking into account the entirety of 2023, Cboe’s consolidated equity market share was approximately 11.7%, MEMX 2.7%, IEX 2.6%, MIAX 1.2%, and LTSE 0.0%. Cboe’s consolidated equity market share is more than 4x that of MEMX (11.7% vs 2.7%) and IEX (11.7% vs. 2.6%), almost 10x more than MIAX (1.2%), and approaching more than 5000x more volume than LTSE (11.7% vs. 0.00%)
- Notably, even the *combined* consolidated equity market share for each of the Non-Affiliated SROs for the entirety of 2023 – 6.5% - fell well short of Cboe’s 11.7%.

Given the above, it is unreasonable for Cboe to receive the same voting power as the Non-Affiliated SROs, especially one that possesses less than 1% consolidated equity market share, rather than a number of votes commensurate with Cboe’s market share and its similarities in that regard to other SRO Groups. *See, e.g., Etelson v. Off. Of Pres. Mgmt.*, 684 F.2d 918, 926 (D.C. Cir. 1982) (agency action is at its “most arbitrary when it treats similarly situated people differently”). In fact, Cboe’s consolidated equity market share percentage is closer to the NYSE SRO Group and Nasdaq SRO Group than it is to the Non-Affiliated exchanges. While the NYSE and Nasdaq SRO Groups currently have greater consolidated equity market share than Cboe, it is still unreasonable to classify Cboe with the Non-Affiliated SROs when the closest Non-Affiliated SRO is, at best, still 9% away from Cboe’s consolidated equity market share. In sum, the Commission’s mandated allocation of votes is detached from any rational basis and is not supported by a realistic evaluation of each SRO’s contribution of equity market data to the NMS plans.

As previously noted by Cboe,<sup>13</sup> the only explanation offered by the Commission in defense of the proposed voting allocation is that using a 15% threshold for a second vote instead of a lower threshold, such as the 10% figure recommended by the Equity Market Structure Advisory Committee, is that the lower recommended threshold “would suggest that a third vote would be appropriate at 20% of consolidated equity market share.”<sup>14</sup> If the Commission deems it appropriate to tie voting authority to market share, however, then it should do so in a more rational matter, rather than simply predetermining a result to favor the smaller, unaffiliated exchanges that in comparison to Cboe generate a significantly smaller fraction of the equity market data that is disseminated through the consolidated tape. To avoid this result, the proposed voting allocation should be modified to provide for additional voting tiers that are tied to a more balanced calculation of consolidated equity market share. Cboe provides such an alternative below.

### **Mandated Voting Framework vs. Cboe’s Alternative Voting Framework**

#### *The Plan’s Voting Framework as Mandated by the Commission*

The mandated Plan proposes that each SRO Group or Non-Affiliated SRO will be entitled to name a member of the operating committee who will be authorized to cast one vote on all operating committee matters pertaining to the operation and administration of the Plan. However, a member representing an SRO Group or Non-Affiliated SRO whose market center(s) have consolidated equity market share of more than 15 percent during four of the six calendar months preceding a vote of the operating committee will be authorized to cast two votes. Additionally, a member representing an exchange that has ceased operations as an equity trading venue or has yet to commence operation as an equity trading venue, will not be permitted to cast a vote on Plan matters. Finally, per Section 4.3(a) of the proposed Plan, consolidated equity market share is calculated as the average daily dollar equity trading volume of eligible securities of an SRO Group or Non-Affiliated SRO as a percentage of the average daily dollar equity trading volume of all the SROs Groups and Non-Affiliated SROs, as reported to the CQ, CTA, and UTP Plans.

#### *Cboe’s Alternative Voting Framework*

Cboe believes that a revised and more balanced approach to SRO voting should be adopted by the Commission. As set forth below, Cboe urges to Commission to modify the Plan so that it includes

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<sup>13</sup> See Cboe comment letter, submitted by Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe Global Markets, Inc. (February 28, 2020) (“Cboe Comment Letter”), at 10-11, available at: <https://www.sec.gov/comments/4-757/4757-6891283-210918.pdf>.

<sup>14</sup> Supra note 11, at 2176.

a three-tiered voting framework.<sup>15</sup> While Cboe objects to the proposed allocation of votes in the proposed Plan, we believe that any voting structure that is ultimately adopted should still preserve the remaining principles reflected in the original CT Plan approval order.<sup>16</sup> Specifically, as set forth by the initial CT Plan, our alternative framework preserves a 2/3rd voting requirement, exchange group voting, and a 15% consolidated equity market share threshold.

First, the Commission has previously stated that SRO voting should reflect the “significance within the national market system of those exchanges that, in their roles as SROs, oversee trading activity that generates a significant amount of equity market data.”<sup>17</sup> The original CT Plan sought to implement this principle through the allocation of two votes to those SRO Groups or Non-Affiliated SROs with greater than 15% consolidated equity market share, and one vote to those SRO Groups and Non-Affiliated SROs with less than 15% consolidated equity market share. Again, Cboe believes that this framework is untenable.

Instead, Cboe believes that a three-tiered voting structure (described below) will provide a more reasoned, and sensible approach to implement the same principle – i.e., the SROs with the greatest knowledge of, and responsibility for, market operations should have a greater role in overseeing the distribution of consolidated equity market data. A three-tiered voting structure will also provide an opportunity for other SROs to increase their voting power in the Plan if they reach the middle tier.

Importantly, rather than seeking to completely redesign the Plan’s proposed voting framework, Cboe’s three-tiered structure seeks merely to recognize the significant difference between an SRO Group (*i.e.*, Cboe) that is closer to the 15% threshold (calculated as described below) and oversees a significant level of trading activity, and an SRO or SRO Group that is well below the 15% threshold (again, calculated as described below) and oversees a much less significant level of trading activity. Unlike the proposed two-tiered voting framework, Cboe’s three-tiered construct recognizes the significant role a “middle tier” SRO plays in operating the NMS plans and the fact that Cboe’s market share is more like the market share of the NYSE and Nasdaq groups, rather than the other exchanges.

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<sup>15</sup> While Cboe previously suggested an alternative three-tiered voting framework, Cboe notes that the proposal described herein is supported by an analysis of consolidated equity market share numbers, and a new basis for calculating consolidated equity market share using a 50% TRF haircut. As such, the Commission has yet to consider Cboe’s proposal, and urges the Commission to mandate the adoption of Cboe’s proposed framework. See Cboe Comment Letter, supra note 13.

<sup>16</sup> See Securities Exchange Act Release No. 92586 (August 6, 2021), 86 FR 44142 (August 11, 2021) (“Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data”).

<sup>17</sup> Supra note 10.

Second, Cboe believes that any voting structure should address TRF market share in a more principled manner. Specifically, the mandated Plan's calculation of consolidated equity market share fails to account for the importance of quotations contributed to the consolidated tape by the exchanges, which are essential to ensuring transparent markets and fostering price discovery. As a result, this approach has the effect of artificially distorting downward each exchange's consolidated equity market share. Therefore, any calculation of consolidated equity market share should account for the fact that the TRF submits *only* equity transactions (*i.e.*, trades) to the consolidated tape, while the exchanges submit not just trades but also quotations in NMS securities that are essential to today's equity markets.

A reasonable approach to fully recognizing the exchanges' contribution to the consolidated tape can be derived from today's Revenue Allocation Summary ("RAS"),<sup>18</sup> which is used by the current Operating Committees for the three existing national market system equity data plans ("Securities Information Processors")<sup>19</sup> to determine how market data income (revenue less administrative expenses) is allocated to the individual SROs. Per the RAS, income is comprised of two components: (1) an SRO's share of revenue in an Eligible Security<sup>20</sup> based on its *Trading Share*, and (2) an SRO's share of revenue in an Eligible Security based on its *Quoting Share*.

Because the TRF does not quote, but only collects trade reports, FINRA is currently entitled to its proportion of only 50% of the income formula – *i.e.*, the Trading Share – while each of the exchanges is entitled to their proportion of 100% of the income allocation because they provide both trades and quotations to the consolidated tape. By extension, Cboe suggests that the calculation for consolidated equity market share haircut the TRF by 50%. Applying this methodology,<sup>21</sup> the consolidated equity market share calculations would be as follows for 2021, 2022 and 2023:

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<sup>18</sup> See "Summary of Market Data Revenue Allocation Formula", available at: [https://www.ctaplan.com/publicdocs/ctaplan/Revenue\\_Allocation\\_Formula\\_Summary.pdf](https://www.ctaplan.com/publicdocs/ctaplan/Revenue_Allocation_Formula_Summary.pdf).

<sup>19</sup> The three equity data plans that currently govern the collection, consolidation, processing and dissemination of consolidated equity market data via the exclusive SIPs are: (1) the Consolidated Tape Association Plan; (2) the Consolidated Quotation Plan; and (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

<sup>20</sup> See CTA Plan, Composite as of June 3, 2021, Section IV, definition of "Eligible Security", available at: <https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/110000358917/CTA%20Plan%20-%20Composite%20as%20of%20June%203,%202021.pdf>; see also Nasdaq UTP Plan, Composite as of June 3, 2021, Section III(B), definition of "Eligible Security", available at: [https://www.utpplan.com/DOC/Nasdaq-UTPPlan\\_Composite\\_as\\_of\\_June\\_6\\_3\\_21.pdf](https://www.utpplan.com/DOC/Nasdaq-UTPPlan_Composite_as_of_June_6_3_21.pdf).

<sup>21</sup> For reference, the mandated Plan calculates consolidated equity market share as: *Average daily dollar equity trading volume of eligible securities of an SRO Group or non-affiliated SRO)/(Average daily dollar equity trading volume of all the SRO Groups and non-affiliated SROs)*. Cboe is proposing that



SRO Groups	2021 Full Year	2022 Full Year	2023 Full Year	With 50% TRF Haircut		
				2021	2022	2023
NYSE	30,141,808,022,543	30,048,607,082,558	26,487,792,441,969	26.1%	25.9%	26.0%
Nasdaq	30,182,229,650,979	29,399,385,822,072	24,975,760,649,539	26.1%	25.3%	24.5%
Cboe	21,009,350,387,384	19,030,329,719,545	15,030,132,621,825	18.2%	16.4%	14.8%
<b>Subtotal</b>	<b>81,333,388,060,906</b>	<b>78,478,322,624,175</b>	<b>66,493,685,713,333</b>	<b>70.4%</b>	<b>67.6%</b>	<b>65.3%</b>
<b>Non-Affiliated SROS</b>						
MEMX	2,390,393,533,984	4,010,953,770,177	3,513,158,829,159	2.1%	3.5%	3.5%
IEX	4,483,706,502,047	4,713,730,276,529	3,325,310,821,750	3.9%	4.1%	3.3%
MIAX	679,828,698,885	1,217,739,592,966	1,566,392,596,487	0.6%	1.0%	1.5%
LTSE	437,367,499	2,752,708,956	3,176,781,255	0.0%	0.0%	0.0%
<b>Subtotal</b>	<b>7,554,366,102,415</b>	<b>9,945,176,348,628</b>	<b>8,408,039,028,651</b>	<b>6.5%</b>	<b>8.6%</b>	<b>8.3%</b>
TRF	53,407,789,352,771	55,422,022,987,930	53,757,534,755,930	23.1%	23.9%	26.4%
<b>Total</b>	<b>142,295,543,516,092</b>	<b>143,845,521,960,733</b>	<b>128,659,259,497,913</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Based on these consolidated equity market share statistics, Cboe proposes a voting structure in which SRO Groups and Non-Affiliated SROs would receive either 1, 2, or 3 votes, with a 2/3<sup>rd</sup> majority of such votes needed for Plan action. Cboe also supports the mandated Plan's provision that an exchange would be eligible to vote on the Plan's operating committee only if it operates a trading venue. Finally, Cboe proposes that the votes would be allocated based on the following three tiers:

- <5% consolidated equity market share: 1 vote
- 5%-15% consolidated equity market share: 2 votes
- >15% consolidated equity market share: 3 votes

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consolidated equity market share be calculated with a 50% haircut being applied to the TRF volume included in the mandated Plan's denominator. Applying this logic, consolidated equity market share would be calculated as: *(Average daily dollar equity trading volume of eligible securities of an SRO Group or non-affiliated SRO)/[(.50)(TRF) + (Average daily dollar trading volume of all the SRO Groups and non-affiliated SROs)]*.

Utilizing the 50% TRF haircut equity market share calculation, and the consolidated equity market share numbers for 2023, Operating Committee votes would be allocated as follows:

<b>SRO</b>	<b>Vote(s)</b>
<b>NYSE</b>	<b>3</b>
<b>Nasdaq</b>	<b>3</b>
<b>SUBTOTAL</b>	<b>6</b>
<b>Cboe</b>	<b>2</b>
<b>TOTAL VOTES</b>	<b>8</b>
<b>MEMX</b>	<b>1</b>
<b>IEX</b>	<b>1</b>
<b>LTSE</b>	<b>1</b>
<b>MIAX</b>	<b>1</b>
<b>FINRA</b>	<b>1</b>
<b>TOTAL VOTES</b>	<b>5</b>

Cboe believes that this voting framework would have the following benefits:

1. It would be more representative of the consolidated equity market share for each SRO or SRO Group. Under the proposed Plan, every exchange is awarded the same one vote as Cboe, even if an SRO accounts for essentially 0% of consolidated equity market share, and Cboe accounts for 11.7%. Indeed, Cboe is allocated one vote, despite individually accounting for more consolidated equity market share (11.7%) than the five smaller exchanges combined (6.5%). While Cboe’s suggested alternative would separate Cboe from the Non-Affiliated SROs, Cboe’s approach also provides a meaningful opportunity for smaller exchanges that experience growth to increase their voting representation if they reach the much more attainable 5% threshold.
2. Additionally, Cboe’s framework would also have the benefit of driving consensus amongst the SROs. As illustrated above, with the current number of SROs there would be 13 votes under Cboe’s framework. A 2/3 majority would require 9 votes for Plan action. In this regard, Cboe’s alternative framework parallels the Commission’s goal of preventing the SRO Groups from “command[ing] a majority of votes and thereby control[ing] significant Equity Data Plan actions.”<sup>22</sup> Instead, some level of consensus would be required from at least one of the Non-Affiliated SROs in order for a measure to be approved by the Plan’s operating committee. Notably, this would still be the case if Cboe were ever to rise into the >15% tier and earn 3 votes instead of 2, or a new SRO were to commence trading. In either scenario, the total number of votes would then increase to 14, with 10 votes required

<sup>22</sup> Supra note 11.

to meet the 2/3 threshold for Plan action. In that scenario, the SRO Groups would still not have the requisite 10 votes for Plan action on their own, and they would need to garner consensus with the Non-Affiliated SROs.

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Cboe believes that Plan governance is critical, but the voting framework in the proposed Plan is fundamentally flawed, and arbitrary and capricious in violation of the APA. Cboe therefore urges the Commission to consider the reasoned analysis set forth in this letter, and to use Cboe's proposal as the template for the inclusion of a rational voting framework in the Plan that justifies the allocation of voting power.

Regards,

*s/ Patrick Sexton*

Patrick Sexton  
EVP, General Counsel & Corporate Secretary  
Cboe Global Markets, Inc.