

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94308; File No. S7-24-89)

February 24, 2022

Joint Industry Plan; Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Fifty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

I. INTRODUCTION

On November 5, 2021,¹ the Participants² in 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” or “Plan”)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 Amendment”) to amend the UTP Plan to implement the non-fee-related aspects of the

¹ See Letter from Robert Books, Chair, UTP 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., The Investors’ Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the “Participants”).

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

⁴ 15 U.S.C 78k-1.

⁵ 17 CFR 242.608.

Commission’s Market Data Infrastructure Rules (“MDI Rules”).⁶ The Proposed Amendment was published for comment in the Federal Register on November 26, 2021.⁷

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,⁸ to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

II. SUMMARY OF THE PROPOSED AMENDMENT⁹

The Participants propose to amend the Plan to comply with Rule 614 of the MDI Rules. Rule 614(e) requires participants to the effective national market system plan(s) for NMS stocks to file by November 5, 2021, an amendment with the Commission that includes each of the requirements of Rule 614(e)(1) – (5).¹⁰

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

⁶ See Securities Exchange Act Release No. 90610, 86 FR 18596 (Apr. 9, 2021) (File No. S7-03-20) (“MDI Rules Release”).

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

⁸ 17 CFR 242.608(b)(2)(i).

⁹ The full text of the Proposed Amendment appears as Attachment A to the Notice. See Notice, supra note 7, 86 FR at 67543–55.

¹⁰ 17 CFR 242.614(e). The Participants have submitted a separate amendment to implement the fee-related aspects of the MDI Rules. See Securities Exchange Act Release No. 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (File No. S7-24-89).

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

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

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

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

The following is a summary of the changes proposed to be made to the Plan by the Proposed Amendment.

Section III., Definitions

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

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

The Proposed Amendment adds 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.” The Participants explain that this definition is being added to comply with the requirements of the MDI Rules and to replace the definition of “Listing Market.”¹¹

The Proposed Amendment amends the definition of “Quotation Information” to define it as “all information with respect to quotations for Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data.” Similarly, the Proposed Amendment amends the definition of “Transaction Reports” to mean “all information with respect to transactions in Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data.” The Participants explain that these amendments are intended to track the MDI Rules more closely.¹²

¹¹ See Notice, supra note 7, 86 FR at 67541. The Commission notes that the Proposed Amendment deletes a definition of “Primary Listing Market” from former Section X. (Section XI., as proposed), Regulatory and Operational Halts.

¹² See Notice, supra note 7, 86 FR at 67541.

Section IV., Administration of Plan

The Proposed Amendment amends Section IV.B., Operating Committee: Authority, to add references to competing consolidators and self-aggregators. Specifically, the Proposed Amendment states that the Operating Committee shall be responsible for overseeing the consolidation¹³ of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to competing consolidators and self-aggregators, among other entities; that the Operating Committee shall be responsible for periodically evaluating the Processor and competing consolidators; and that the Operating Committee shall be responsible for setting the level of fees to be paid by competing consolidators and self-aggregators, among other entities, for services relating to Quotation Information or Transaction Reports in Eligible Securities, and for taking action in respect thereto in accordance with the Plan.

The Proposed Amendment also amends Section IV.B. to require the Operating Committee to publish on the Plan's web site the Primary Listing Exchange for each Eligible Security, and to calculate and publish, on a monthly basis, consolidated market data gross revenues for Eligible Securities. The Participants explain that these amendments are intended to comply with Rule 614(e)(4) and Rule 614(e)(5)(ii).¹⁴

Section VII., Administrative Functions

The Proposed Amendment amends this section by deleting references to the Processor. Additionally, under the Proposed Amendment, the Administrator, not the Processor, shall be

¹³ The Commission notes that under the decentralized consolidation model, the Operating Committee would no longer oversee the consolidation of data by the Processor, but rather the provision of data underlying consolidated market data to competing consolidators and self-aggregators. See Rule 603(b), 17 CFR 242.603(b); Rule 614(e)(1), 17 CFR 242.614(e)(1). See also MDI Rules Release, supra note 6, 86 FR at 18682.

¹⁴ See Notice, supra note 7, 86 FR at 67541.

responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in the Plan. The Participants explain that the Administrative Functions described in the section are more appropriately ascribed to the Administrator.¹⁵

Section VIII., Evaluation of Competing Consolidators

The Proposed Amendment adds new Section VIII to require the Operating Committee to assess the performance of competing consolidators and to submit an annual report to the Commission containing the assessment.¹⁶ The Proposed Amendment requires this annual report to include an analysis with respect to competing consolidators' speed, reliability, and cost of data provision. The Participants explain that these changes are intended to comply with the requirements of Rule 614(e)(3).¹⁷

In addition, the Proposed Amendment requires the Operating Committee, in conducting the analysis, to review the monthly performance metrics to be published by competing consolidators pursuant to Rule 614(d)(5).¹⁸ 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.¹⁹ The Proposed Amendment adds the following monthly performance metrics to this section:

¹⁵ See Notice, supra note 7, 86 FR at 67541.

¹⁶ As a result of this addition, the Proposed Amendment renumbers the remaining sections of the Plan.

¹⁷ See Notice, supra note 7, 86 FR at 67541.

¹⁸ 17 CFR 242.614(d)(5).

¹⁹ Id.

- A. Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;
- B. Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;
- C. System availability statistics, including system up-time percentage and cumulative amount of outage time;
- D. Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and
- E. Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:
 - 1. When a Participant sends an inbound message to a competing consolidator and when the competing consolidator receives the inbound message;
 - 2. When the competing consolidator receives the inbound message and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator; and
 - 3. When a Participant sends an inbound message to a competing consolidator and when the competing consolidator sends the corresponding consolidated message to a customer of the competing consolidator.

The Participants explain that they have proposed to amend Section VIII to define the monthly performance metrics in accordance with Rule 614(d)(5).²⁰

²⁰ See Notice, supra note 7, 86 FR at 67541–42.

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

The Proposed Amendment amends Section IX.A., Quotation Information, to add the requirement that each Participant collect and transmit to competing consolidators and self-aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS,²¹ including all data necessary to generate consolidated market data. Additionally, the Proposed Amendment requires each Participant to make available quotation information, and changes in any such information, to competing consolidators and self-aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.

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

²¹ 17 CFR 242.603(b).

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

The Proposed Amendment also amends Section IX.B. to require Transaction Reports to competing consolidators and self-aggregators to include the time (in microseconds) that the Participant made such information available to competing consolidators and self-aggregators. With respect to FINRA, the Proposed Amendment states that if FINRA's trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, competing consolidators and self-aggregators, then the FINRA trade reporting facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed. Additionally, the Proposed Amendment requires FINRA to convert times that its members report to it in seconds or milliseconds to microseconds and to furnish such times to the Processor, Competing Consolidators, and Self-Aggregators in microseconds. The Participants state that the amendments to Sections IX.A. and IX.B. are designed to comply with the requirements of Rule 614(e)(1) and (2).²²

²² See Notice, supra note 7, 86 FR at 67542. The Commission notes that the Participants state that the Proposed Amendment amends Section IX.B., Transaction Reports, to add the requirement that each Participant agrees to collect and transmit to competing consolidators and self-aggregators all transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS; however, the Proposed Amendment does not actually propose to make this change to the text of the Plan. See Notice, supra note 7, 86 FR at 67550. See also infra Section V, Commission's Solicitation of Comments, Request for Comment #8.

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

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

Finally, the Proposed Amendment amends Section IX.D. to include references to competing consolidators and self-aggregators. Section IX.D., as amended would read: “Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, Competing Consolidators, and Self-Aggregators, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, Competing Consolidators, and Self-Aggregators, the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.”

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

The Proposed Amendment revises this section to delete the definition of “Primary Listing Market” from Section XI.A., Definitions for Purposes of Section XI. The Proposed Amendment also replaces references to “Primary Listing Market” with “Primary Listing Exchange” throughout Section XI.²³ The Participants state that this change would align the text of the Plan with terminology in the MDI Rules.²⁴

The Proposed Amendment amends Section XI.B., Operational Halts, to state that competing consolidators and self-aggregators shall be notified by a Participant if that Participant has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, or where it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee. Similarly, the Proposed Amendment amends Section XI.H., Communications, to state that if a Primary Listing Exchange for an Eligible Security determines it appropriate to initiate a Regulatory Halt, it will notify competing consolidators and self-aggregators of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Primary Listing Exchange. The Participants state that these changes are consistent with Rule 614(e)(1) and would ensure that competing consolidators and self-aggregators are notified of information related to Regulatory and Operational Halts and that competing consolidators can disseminate this information to their customers.²⁵

²³ The Commission notes that the Proposed Amendment does not replace a reference to Primary Listing Market in the definition of “Regulatory Halt” in this section.

²⁴ See Notice, supra note 7, 86 FR at 67542.

²⁵ See id.

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

The Proposed Amendment amends Section XII.B.(ii) and (iii) to add references to competing consolidators and self-aggregators. Specifically, with respect to the reporting obligations of Participants, proposed Section XII.B.(ii) provides that transactions in Eligible Securities executed after 8:00 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processor, competing consolidators, and self-aggregators between the hours of 4:00 a.m. and 8:00 p.m. ET on the next business day (T+1), and shall be designated “as/of” trades to denote their execution on a prior day, and be accompanied by the time of execution. And proposed Section XII.B.(iii) provides that transactions in Eligible Securities executed between 12:00 a.m. (midnight) and 4:00 a.m. ET shall be transmitted to the Processor, competing consolidators, and self-aggregators between 4:00 a.m. and 9:30 a.m. ET, on trade date, shall be designated as “.T” trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution.

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

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

The Proposed Amendment amends Section XIV.C., Maintenance of Financial Records, by replacing references to the Processor with references to the Administrator. The Participants explain that the responsibilities described in that section are more appropriately ascribed to the Administrator.²⁶

²⁶ See Notice, supra note 7, 86 FR at 67542.

Section XV. (Previously Section XIV.), Indemnification

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

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

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

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

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

Section XXI., Depth of Book Display

The Proposed Amendment deletes this section. The Participants explain that this provision is obsolete given the MDI Rules.²⁷

III. SUMMARY OF COMMENTS

In response to the Notice, the Commission received two comments on the Proposed Amendment.²⁸ Generally, both commenters oppose the Proposed Amendment and recommend that the Commission disapprove it.²⁹

Both commenters argue that the Proposed Amendment contains provisions that would be irrelevant under the decentralized consolidation model. Specifically, one commenter states that the Proposed Amendment appears to continue to contain the concept of a single processor in contravention of the MDI Rules Release.³⁰ The other commenter argues that under the MDI Rule, only competing consolidators would sell consolidated market data to vendors and subscribers. Therefore, this commenter does not believe the sections of the Proposed Amendment that discuss vendors' and subscribers' contractual relationships with the Plan are

²⁷ See Notice, supra note 7, 86 FR at 67542.

²⁸ See Letters to Vanessa Countryman, Secretary, Commission, 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 (Dec. 17, 2021) (“SIFMA Letter”); from Patrick Flannery, Chief Executive Officer, MayStreet, to Vanessa Countryman, Secretary, Commission (Dec. 17, 2021) (“MayStreet Letter”).

²⁹ SIFMA Letter, supra note 28, at 1, 8; MayStreet Letter, supra note 28, at 1. The Commission notes that the comment letters submitted by these commenters address both the Proposed Amendment and similar proposed amendments to the Second Restatement of the Consolidated Tape Association (“CTA”) Plan and Restated Consolidated Quotation (“CQ”) Plan (collectively “CTA/CQ Plan”). See Securities Exchange Act Release No. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021).

³⁰ SIFMA Letter, supra note 28, at 8.

relevant.³¹ The commenter recommends that these provisions be removed or altered to reflect that the Plan no longer has agreements with vendors and end users and instead will have agreements with competing consolidators and self-aggregators related specifically to the cost of content underlying the market data.³²

Separately, one commenter argues that validation procedures between competing consolidators and Participants should be similar to those between the current Processor and the Participants.³³ While this commenter acknowledges that the validation process for competing consolidators and Participants may differ from the current Processor validation process, the commenter believes that establishing validation procedures with the new competing consolidators that would be consistent across SROs is a prudent measure for ensuring data quality.³⁴ Finally, the commenter also believes that the Participants' description of services offered by the current plans for equity market data have confused the underlying content of consolidated market data and the consolidated market data itself.³⁵

IV. PROCEEDINGS TO DETERMINE WHETHER TO APPROVE OR DISAPPROVE THE PROPOSED AMENDMENT

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,³⁶ and Rule 700 of the Commission's Rules of Practice,³⁷ to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any

³¹ MayStreet Letter, supra note 28, at 3.

³² See id.

³³ See id. at 4.

³⁴ See id.

³⁵ See id. at 3.

³⁶ 17 CFR 242.608.

³⁷ 17 CFR 201.700.

changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendment to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission "shall approve a ... proposed amendment to a national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such ... amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act."³⁸ Rule 608(b)(2) further provides that the Commission shall disapprove a proposed amendment if it does not make such a finding.³⁹ Pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁴⁰ the Commission is providing notice of the grounds for disapproval under consideration:

- Whether the Proposed Amendment is consistent with the Commission's MDI Rules as outlined in Rule 614(e)⁴¹;
- Whether, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the

³⁸ See 17 CFR 242.608(b)(2).

³⁹ See *id.*

⁴⁰ 17 CFR 242.608(b)(2)(i). See also Commission Rule of Practice 700(b)(2), 17 CFR 201.700(b)(2).

⁴¹ See MDI Rules Release, *supra* note 10.

mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act⁴²;

- Whether consistent with Rule 603(a) of Regulation NMS, the Proposed Amendment provides for the distribution of information with respect to quotations for and transactions in NMS stocks on terms that are fair and reasonable and not unreasonably discriminatory;
- Whether modifications to the Proposed Amendment, or conditions to its approval, would be required to make the Proposed Amendment 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 Act⁴³;
- Whether the Proposed Amendment is consistent with Congress’s finding, in Section 11A(1)(C)(iii) of the Act, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure “the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities”⁴⁴; and
- Whether, consistent with the purposes of Section 11A(c)(1)(B) of the Act,⁴⁵ the Proposed Amendment’s provisions are drafted to support the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information

⁴² See 17 CFR 242.608(b)(2).

⁴³ See id.

⁴⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁴⁵ See 15 U.S.C. 78k-1(c)(1)(B).

with respect to quotations for and transactions in NMS securities, and the fairness and usefulness of the form and content of such information.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder ... is on the plan participants that filed the NMS plan filing.”⁴⁶ The description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.⁴⁷ 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 the NMS plan filing is consistent with the Act and the applicable rules and regulations thereunder.⁴⁸

V. COMMISSION’S SOLICITATION OF COMMENTS

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 11A or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule

⁴⁶ 17 CFR 201.700(b)(3)(ii).

⁴⁷ See id.

⁴⁸ Id.

608(b)(2)(i) of Regulation NMS,⁴⁹ any request for an opportunity to make an oral presentation.⁵⁰

The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendment,⁵¹ in addition to any other comments they may wish to submit about the Proposed Amendment. In particular, the Commission seeks comment on the following:

1. What are commenters' views on whether the text of the Proposed Amendment reflects 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. For example, do commenters believe that Section III of the Plan (titled Definitions) appropriately defines terms to accurately reflect the decentralized consolidation model consistent with the MDI Rules Release? If not, what, if any, modifications should be made to these definitions in the Proposed Amendment? Additionally, do commenters believe that the Proposed Amendment should be modified to explicitly incorporate certain terms such as Consolidated Market Data, as defined in Rule 600(b)(19) into the Plan? Similarly, Sections V and VI describe the selection and evaluation and functions of the Processor, respectively. Do commenters believe that modifying the Proposed Amendment to remove the role of the Processor is necessary for the decentralized consolidation model consistent with the MDI Rules Release?

⁴⁹ 17 CFR 242.608(b)(2)(i).

⁵⁰ Rule 700(c)(ii) of the Commission's Rules of Practice provides that "[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views." 17 CFR 201.700(c)(ii).

⁵¹ See Notice, supra note 7.

2. What are commenters' views on whether the proposed revisions to the definitions of Quotation Information and Transaction Reports in Section III of the Proposed Amendment are appropriate?

3. What are commenters' views on whether the Proposed Amendment includes 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. Specifically, do commenters believe that the Proposed Amendment requires the Participants to timestamp all of the data underlying Consolidated Market Data, as defined in Rule 600(b)(19), upon generation and upon provision to competing consolidators and self-aggregators? If not, should the Proposed Amendment be modified to include a requirement for such timestamping?

4. What are commenters' views on the proposed deletion of language in Section IX of the Proposed Amendment stating, "The Participants shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant." Specifically, do commenters believe that the Proposed Amendment should be modified to retain that language, but replace the term "Processor" with "Competing Consolidators and Self-Aggregators"?

5. What are commenters' views on the revisions to the indemnification provisions in Section XV of the Proposed Amendment? Specifically, do commenters believe that the deletion of Vendors as a recipient of Transaction Reports, Quotation Information, "or other information"

reported to and disseminated by the Processor, competing consolidators and self-aggregators is appropriate?

6. What are commenters' views on whether the Proposed Amendment sufficiently describes how the Plan will operate under the Initial Parallel Operation Period when "the decentralized consolidation model will run in parallel to the existing exclusive SIP model."⁵² Specifically, Section D of the Proposed Amendment states that it will be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission. Do commenters believe that the Proposed Amendment should specify how the Participants will transition from the current Plan to the initial parallel operation period and the process after the initial parallel operation period?

7. What are commenters' views on the proposed revisions to Section IX.B. of the Proposed Amendment that state that if FINRA's trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor, competing consolidators and self-aggregators, then the FINRA trade reporting facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed? Specifically, what are commenters' views about these proposed revisions? Do commenters believe that the Proposed Amendment should be modified to make competing consolidators and self-aggregator recipients of the time of the transmission from the FINRA trade reporting facility?

8. The description of the Proposed Amendment states that the Proposed Amendment amends Section IX.B. to add the requirement that each Participant agrees to collect and transmit to competing consolidators and self-aggregators all transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS. However, the Proposed Amendment does

⁵² See MDI Rules Release, supra note 6, at Section III.H.2., 86 FR at 18698–701.

not make this change to the text of the Plan. Do commenters believe that the Proposed Amendment should be modified to incorporate this revision into Section IX.B.?

9. What are commenters' views on the proposed revisions to Section IX.D. of the Proposed Amendment? Do commenters believe that the statement in the section that "the Participant shall promptly notify the Processor, Competing Consolidators, and Self-Aggregators of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated" should be modified to require the Participant to resume collecting and transmitting Quotation Information and Transaction Reports to competing consolidators and self-aggregators as soon as the condition or event is terminated? Do commenters believe that the statement in the section that "[u]pon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations" should be modified to reference competing consolidators and self-aggregators?

10. Do commenters believe that the Proposed Amendment should be modified to replace a reference to "Primary Listing Market" with "Primary Listing Exchange" in the definition of "Regulatory Halt" in Section XI.A.?

11. What are commenters' views on the Proposed Amendment in light of the decentralized consolidation model with respect to (i) references to the Processor and Subscribers; (ii) the dissemination of Regulatory Halts; (iii) the authority of the Operating Committee under Section IV.B. of the Plan with respect to competing consolidators, self-aggregators, Vendors, Subscribers, News Services, and others; and (iv) references to contracts with Vendors, Subscribers, News Services and others. Do commenters believe that the Proposed Amendment

should be modified with respect to any of these provisions to conform to the decentralized consolidation model required by the MDI Rules?

12. What are commenters' views on the following sections of the Proposed Amendment in light of the decentralized consolidation model: Administration of the Plan, Potential Conflicts of Interest, Selection and Evaluation of the Processor, Functions of the Processor, Market Access, Regulatory and Operational Halts, Hours of Operation, Financial Matters, Indemnification, Applicability of Securities Exchange Act of 1934, and Operational Issues. Do commenters believe that the Proposed Amendment should be modified with respect to any of these provisions to conform to the decentralized consolidation model required by the MDI Rules? If so, please describe how the Proposed Amendment should be modified to conform the Plan to the decentralized consolidation model required by the MDI Rules.

13. Do commenters have views about any other aspect of the Proposed Amendment? Do commenters believe that the Proposed Amendment should be modified in any other way to be consistent with the MDI Rules or the MDI Rules Release?

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. S7-24-89 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. S7-24-89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the Participants' principal offices. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should

refer to File Number File No. S7-24-89 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵³

Jill M. Peterson
Assistant Secretary

⁵³ 17 CFR 200.30-3(a)(85).