have the same position and exercise limits on NOM and ISE.[8]

Amending ''exceed'' to ''exceeded'' in Options 3, Section 15(a)(1) is a non-substantive change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Amending Options 9, Sections 13 and 15 to provide that the position and exercise limits for IBIT options shall be 25,000 contracts does not impose an undue burden on competition as the position and exercise limits will apply to all trading for IBIT options on the Exchange as well as other exchanges that file a similar proposal.[9] Amending ''exceed'' to ''exceeded'' in Options 3, Section 15(a)(1) is a non-substantive change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposal will conform NOM's IBIT options position and exercise limits with ISE's IBIT options position and exercise limits and will correct a grammatical error and therefore raises no novel legal or regulatory issues.[13] Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2024–062 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 number SR–NASDAQ–2024–062. This file number should be included on the subject line if email 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2024–062 and should be submitted on or before December 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26872 Filed 11–18–24; 8:45 am]

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[8] The Exchange believes that other exchanges will adopt position and exercise limits of 25,000 contracts for IBIT Option ETPs. All Nasdaq affiliated markets have filed to adopt a 25,000 contract position and exercise limit for IBIT options.

[9] All Nasdaq affiliated markets have filed to adopt a 25,000 contract position and exercise limit for IBIT options.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See supra* notes 4 and 5 and accompanying text.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101625; File No. 4–820]

Options Price Reporting Authority; Order Disapproving a Proposed Amendment To Modify the OPRA Plan Relating to Dissemination of Exchange Proprietary Market Data Information

November 14, 2024.

I. Introduction

On November 8, 2023, the Cboe Exchange, Inc. (''Cboe Options''), Cboe C2 Exchange, Inc. (''C2''), Cboe BZX Exchange, Inc. (''BZX''), and Cboe EDGX Exchange, Inc. (''EDGX'') (collectively, ''Cboe'')[1] filed with the Securities and Exchange Commission (''Commission'') a proposal (the ''Proposed Amendment'') to amend the plan of the Options Price Reporting Authority

[1] Cboe Global Markets, Inc. operates Cboe Options, C2, BZX, and EDGX. *See https://www.cboe.com/us/options/overview.*

(''OPRA'') for reporting of consolidated options last sale reports and quotation information (''OPRA Plan'' or ''Plan'').[2] The Proposed Amendment was published for comment in the **Federal Register** on January 22, 2024.[3] The Commission has received comment letters on the Proposed Amendment.[4]

On April 19, 2024, the Commission instituted proceedings under Rule 608(b)(2)(i) of Regulation NMS,[5] 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.[6] On July 11, 2024, pursuant to Rule 608(b)(2)(i) of Regulation NMS, the Commission extended the period within which to conclude proceedings regarding the Proposed Amendment to September 18, 2024.[7] On September 18, 2024, pursuant to Rule 608(b)(2)(ii) of Regulation NMS, the Commission extended the period within which to conclude proceedings regarding the Proposed Amendment to November 15, 2024.[8]

This order disapproves the Proposed Amendment.

II. Summary of the Proposed Amendment

A. Background

There are eighteen registered national securities exchanges that list and trade standardized listed options (''options''),[9] which are issued and cleared by The Options Clearing Corporation. While the market structure for options resembles that of equities in certain respects, there are important differences. For example, while stocks can be traded on any of the sixteen national securities exchanges that trade them, as well as on off-exchange venues, options can be traded only on an options exchange,[10] and certain index options are exclusively listed only on one exchange (or affiliated exchanges) pursuant to a licensing agreement with the index provider (*e.g.,* Cboe's index options on the S&P 500 Index and Nasdaq's index options on the Nasdaq-100 Index) or based on an index the exchange creates and calculates (*e.g.,* Cboe's VIX volatility index).[11] On Cboe Options, its highest volume options are typically its proprietary index options.[12]

B. OPRA

Congress directed the Commission to facilitate the establishment of a national market system for securities in accordance with the findings and objectives set forth in Section 11A(a)(1) of the Securities Exchange Act of 1934 (''Act'').[13] Among other things, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure ''the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.'' [14] In furtherance of this objective for the options market, the Commission directed the exchanges, through a national market system plan (''NMS Plan''), to create a centralized system for options market data pursuant to which the exchanges created, and the Commission approved, OPRA.[15]

The purpose of OPRA is to collect from each exchange information on the quotes displayed on, and transactions that occur on, each exchange, process and consolidate that information into a single ''consolidated tape,'' and then distribute the information to subscribers, including the exchanges and market participants, who pay subscription fees to OPRA.[16] OPRA performs these functions through a contract with the Securities Information Automation Corporation, which acts as the securities information processor (''SIP'') for OPRA.[17]

As parties to OPRA, all options exchanges are responsible for ''act[ing] jointly with respect to matters to which they share authority . . . in planning, developing, operating, or regulating'' OPRA.[18] To carry out this responsibility, each exchange appoints one member to the OPRA Management Committee, which is responsible for ''all policy decisions on behalf of OPRA in furtherance of the functions and

[2] The terms under which exchanges participate in OPRA are set forth in the Limited Liability Company Agreement of Options Price Reporting Authority, LLC. *See https://cdn.opraplan.com/documents/OPRA_Plan.pdf.*

[3] *See* Securities Exchange Act Release No. 99345 (Jan. 16, 2024), 89 FR 3963 (Jan. 22, 2024) (''Notice'').

[4] Comments received in response to the Notice are available on the Commission's website at *https://www.sec.gov/comments/4-820/4-820.htm.*

[5] 17 CFR 242.608(b)(2)(i).

[6] *See* Securities Exchange Act Release No. 99994 (Apr. 19, 2024), 89 FR 31785 (Apr. 25, 2024) (''Order Instituting Proceedings''). Comments received in response to the Order Instituting Proceedings are available on the Commission's website at *https://www.sec.gov/comments/4-820/4-820.htm.*

[7] *See* Securities Exchange Act Release No. 100495 (July 11, 2024), 89 FR 58212 (July 17, 2024).

[8] *See* Securities Exchange Act Release No. 101091 (Sept. 18, 2024), 89 FR 77951 (Sept. 24, 2024).

[9] Those exchanges are: (1) Cboe Options, (2) C2, (3) BZX, and (4) EDGX (all under the common control of Cboe Global Markets, Inc.); (5) Miami International Securities Exchange LLC, (6) MIAX Emerald, LLC, (7) MIAX PEARL, LLC, and (8) MIAX Sapphire, LLC (all under the common control of Miami International Holdings, Inc.); (9) Nasdaq BX, Inc., (10) Nasdaq GEMX, LLC, (11) Nasdaq ISE, LLC, (12) Nasdaq MRX, LLC, (13) Nasdaq PHLX LLC (''Nasdaq Phlx''), and (14) The Nasdaq Stock Market LLC (all under the common control of Nasdaq, Inc.); (15) NYSE Arca, Inc. and (16) NYSE American LLC (both under the common control of Intercontinental Exchange, Inc.); (17) BOX Exchange LLC; and (18) MEMX, LLC.

[10] *See* By-Laws of The Options Clearing Corporation, Article I, Section 1(C)(27) (defining ''confirmed trade'') and Article VI, Section 1.

[11] *See, e.g., Standard & Poor's Corp.* v. *Commodity Exchange, Inc.,* 538 F. Supp. 1063 (S.D.N.Y. 1982), aff'd, *Standard & Poor's Corp.* v. *Commodity Exchange, Inc.,* 683 F.2d 704 (2d Cir. 1982). *See also Dow Jones & Company, Inc.* v. *International Securities Exchange, Inc., and Options Clearing Corporation,* 451 F.3d 295 (2d Cir. 2006). Cboe, which has the largest number of proprietary index options, has expanded its proprietary product offerings through a licensing agreement to develop and list options based on FTSE and Russell indices, an agreement that has been extended to 2030. *See* Rick Rosenthal, What to Know about the Cboe and FTSE Russell Combination (Apr. 29, 2020), *available at https://www.cboe.com/insights/posts/what-to-know-about-the-cboe-and-ftse-russell-combination/.*

[12] *See* Cboe Options Exchange Symbol Data, *available at https://www.cboe.com/us/options/market_statistics/symbol_data/?mkt=cone.*

[13] *See* 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981), 22 SEC. Docket 484 (Mar. 31, 1981). New NMS Plans, and amendments to an effective NMS Plan, are published by the Commission after which the Commission may approve with such changes or subject to such conditions as the Commission may deem necessary or appropriate, disapprove the plan or amendment, or institute proceedings to consider whether to disapprove the plan or amendment. *See* 17 CFR 242.608(b)(2).

[16] *See* OPRA Plan, Article II, Section 2.4 (Purpose) and 15 U.S.C. 78c (a)(22). *See also* Securities Exchange Act Release No. 43621 (Nov. 27, 2000), 65 FR 75564, 75565 (Dec. 1, 2000) (File No. 4–434) (''The OPRA Plan governs the process by which options market data are collected from participant exchanges, consolidated, and disseminated. Consolidated data, when it is disseminated in a timely manner, enable broker-dealers and investors to know the best price that is currently available for a particular product. It assists customers in setting the terms of their orders and in monitoring how well their brokers execute their orders. Consolidated data also assist investors' brokers to obtain, as well as exchange market makers and specialists to provide, the best execution possible for an order.'').

[17] *See* 15 U.S.C. 78c (a)(22)(A) (defining ''securities information processor''). *See also* 15 U.S.C. 78k–1(b) (concerning registration of SIPs). *See also* Securities Exchange Act Release No. 43621 (Nov. 27, 2000), 65 FR 75564, 75565 (Dec. 1, 2000) (File No. 4–434) (''The OPRA committee selected the Securities Industry Automation Corporation ('SIAC') as the facility for gathering the last sale and quote information from each of the participant exchanges and consolidating and disseminating such data to approved vendors. All of the transactions executed on, and price quotations for options generated by, each options exchange are communicated to the public by OPRA through the facilities of its exclusive processor, SIAC. The messages are sent to OPRA and distributed to market data vendors on a consolidated basis for use by options market participants, including retail investors, broker-dealers, and the exchanges themselves.'').

[18] *See* OPRA Plan, Article II, Section 2.4 (Purpose).

objectives of OPRA under the [Act] and under [the OPRA Plan]'' including determining the products that OPRA offers and the level of fees for subscribers.[19]

As the Commission has previously stated, the transparency provided by the consolidated OPRA data feed is a central feature of the U.S. securities markets that, ''in turn, contributes to efficient price discovery, offsets the fragmentation of buying and selling interest on multiple exchanges, and facilitates the best execution of customers' orders by broker-dealers.'' [20]

In addition to their responsibility to govern and administer the dissemination of consolidated options data through OPRA, today some exchanges separately sell their own ''proprietary market data.'' [21] Unlike the consolidated SIP data that aggregates all quotes and transactions across all options exchanges, an exchange's or an affiliated exchange group's proprietary market data contains only those quotes and transactions that occur on its market alone or together with its affiliated exchanges.

Exchange proprietary market data might be of interest, for example, to registered options market makers or non-market maker liquidity providers who might want to get exchange data directly and consolidate it themselves rather than wait for the OPRA SIP to consolidate and disseminate the data, which might help liquidity providers better manage their risk and thereby facilitate their ability to provide better-priced displayed quotes to investors.[22]

C. Equivalent Access

Options exchanges have not always been able to offer proprietary market data products. When the Commission approved the OPRA Plan in 1981, the Plan as filed by the options exchanges (including Cboe Options as one of the founding members) made OPRA the exclusive means for the dissemination of last sale reports and quotation information for options and did not allow the options exchanges to offer their own proprietary market data separately.[23]

In 2001, the Commission approved an amendment to the OPRA Plan proposed by the Plan participants to allow exchanges to offer proprietary market data to their members under certain conditions, *provided that* those members have ''equivalent access'' to the consolidated options market data disseminated by OPRA for the same classes or series of options that are included in the exchange proprietary market data.[24] In that approval order the Commission cited the language used in the proposed amendment to the Plan when it stated that ''[a]ccess would be deemed to be 'equivalent' if the information were *equally accessible* on the same terminal or workstation.'' [25]

The provisions in the OPRA Plan that govern the ability of an exchange to offer its own proprietary market data are contained in Section 5.2(c)(ii) and (iii), including the ''equivalent access'' provision in Section 5.2(c)(iii)(A) (''Equivalent Access Provision''), which states:

> (ii) A Member may disseminate information pertaining to quotations and transactions in its market (''Proprietary Information'') through a network separate from the OPRA System only if such dissemination meets the requirements of subparagraph (iii) of this paragraph (c).
>
> (iii) A Member may disseminate its Proprietary Information pursuant to subparagraph (ii) of this paragraph (c) provided that:
>
> (A) such dissemination is limited to other Members and to persons who also have equivalent access to consolidated Options Information disseminated by OPRA for the same classes or series of options that are included in the Proprietary Information. For purposes of this clause (A), ''consolidated Options Information'' means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station; and
>
> (B) a Member may not disseminate its Proprietary Information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of Options Information.

D. Cboe One Options Feed and the Equivalent Access Provision

The Cboe exchanges offer a proprietary market data product called the ''Cboe One Options Feed.'' [26] Cboe describes it as offering ''a comprehensive view of the U.S. options market through a single connection,'' though it contains data on quotes and trades that take place only on the four Cboe exchanges (Cboe Options, C2, BZX, and EDGX).[27]

Cboe has stated that the Equivalent Access Provision can be satisfied if a subscriber to an exchange's proprietary market data, such as the Cboe One Options Feed, subscribes to a ''usage-based'' plan from OPRA, which requires users to request information on a quote or trade and pay based on the amount of data consumed, instead of subscribing to the full streaming OPRA feed.[28] Doing so would allow a subscriber of the Cboe One Options Feed to subscribe to OPRA's less expensive usage-based product instead of OPRA's more expensive nonprofessional subscriber product. In turn, a person that wants to purchase a Cboe One Options Feed subscription while minimizing the fees it would pay for the OPRA subscription that it also would be required to purchase because of OPRA's Equivalent Access Provision, would have an incentive to minimize use of consolidated OPRA data under a usage-based OPRA subscription to greatly reduce or eliminate the fees it would otherwise pay to OPRA.[29]

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[19] *See* OPRA Plan, Article IV, Section 4.1 (OPRA Management Committee).

[20] Securities Exchange Act Release No. 43621 (Nov. 27, 2000), 65 FR 75564 (Dec. 1, 2000) (File No. 4–434). *See also* Securities Exchange Act Release No. 90610 (Dec. 9, 2020), 86 FR 18596, 18598 (Apr. 9, 2021) (File No. S7–03–20) (''Market Data Infrastructure Final Rule'') (stating that the widespread availability of consolidated market data is ''critical to the ability of market participants to participate effectively in the U.S. securities markets.'').

[21] *See, e.g.,* Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702, 28704 (May 13, 2020) (File No. 4–757) (''CT Plan Order'') (explaining in the equities context that ''the proliferation of proprietary exchange data products have heightened the conflicts between the [exchanges'] business interests in proprietary data offerings and their obligations as [self-regulatory organizations] under the national market system to ensure prompt, accurate, reliable, and fair dissemination of core data through the jointly administered [equities plans].'').

[22] *See, e.g.,* Market Data Infrastructure Final Rule, *supra* note 20, at 86 FR 18599 (discussing why market participants might purchase exchange proprietary data from equities exchanges).

[23] *See* Securities Exchange Act Release No. 44580 (July 20, 2001), 66 FR 39218 (July 27, 2001) (SR–OPRA–2001–02) (''2001 Order'') (discussing the OPRA Plan's exclusivity clause).

[24] *See id.* at 39219.

[25] *Id.* at 39218 (emphasis added). In addition, in 2003, the Commission approved an amendment to the OPRA Plan proposed by the Plan participants to allow an exchange to offer proprietary market data to any person, not just to members of the exchange. *See* Securities Exchange Act Release No. 48822 (Nov. 21, 2003), 68 FR 66892 (Nov. 28, 2003) (SR–OPRA–2003–01).

[26] *See, e.g.,* Securities Exchange Act Release No. 97996 (July 26, 2023), 88 FR 50249 (Aug. 1, 2023) (SR–CBOE–2023–034) (notice of filing and immediate effectiveness of a proposed rule change to amend the market data section of Cboe Option's fee schedule including, among other things, to establish fees for the Cboe One Options Feed).

[27] *See* Cboe One Options Feed, *available at https://www.cboe.com/market_data_services/us/options/cboe_one/.* The Cboe One Options Feed consolidates such data from Cboe Options, C2, BZX, and EDGX into a single data product, which allows a subscriber to purchase one product rather than four separate proprietary products that the user would then need to consolidate itself. *See id.*

[28] *See* Notice, *supra* note 3, 89 FR 3965.

[29] The OPRA ''Usage-based Vendor Fee'' is $0.0075 per quote packet or $0.03 per options chain, subject to a $1.25 maximum per month, whereas the ''Nonprofessional Subscriber'' fee is $1.25 for each nonprofessional subscriber per

Continued

E. Cboe's Proposed OPRA Plan Amendment

Cboe filed the proposed OPRA Plan amendment without obtaining the unanimous vote of the Plan participants. Cboe sought to amend the Equivalent Access Provision of the OPRA Plan by filing with the Commission the Proposed Amendment, stating that it was filing it pursuant to Rule 608(a)(1) of Regulation NMS.[30] The Proposed Amendment would change the OPRA Plan to, among other things, allow a per usage OPRA subscription to satisfy the Equivalent Access Provision. Specifically, the Proposed Amendment would ''clarify that access to consolidated Options Information and access to Proprietary Information are deemed 'equivalent' if 'Proprietary Information' and 'consolidated Options Information' (as those terms are defined in the OPRA Plan), are equally accessible on the same terminal or work station, regardless of whether the OPRA data is disseminated on a streaming or per usage-basis.'' [31] Cboe states that ''[t]he new language would clarify that the Equivalent Access Provision is satisfied if a recipient of an exchange proprietary data product also is simultaneously authorized and entitled to receive OPRA data in one of the ways that OPRA makes its data available; that is, by maintaining a streaming subscription to the OPRA feed *or* having the ability to query OPRA data on a usage-basis.'' [32]

month for up to 75,000 such subscribers with lower tiered fees (down to $0.60) for more subscribers. *See* OPRA Fee Schedule, *available at https://cdn.opraplan.com/documents/OPRA_Fee_Schedule.pdf.* For comparison, Cboe offers the Cboe One Options Feed for a $0.25 non-pro user fee for the Summary feed. *See* Cboe One Feed Pricing, *available at https://www.cboe.com/market_data_services/us/equities/cboe_one/.*

[30] Rule 608(a)(1) provides that, ''Any two or more self-regulatory organizations, acting jointly, . . . may propose an amendment to an effective national market system plan . . . by submitting the text of the . . . amendment to the Commission by email, together with a statement of the purpose of such . . . amendment and, to the extent applicable, the documents and information required by paragraphs (a)(4) and (5) of this section.'' 17 CFR 242.608(a)(1).

[31] Notice, *supra* note 3, 89 FR 3965.

[32] *Id.* (emphasis in original). In addition, Cboe proposes to amend the Equivalent Access Provision by adding a new subparagraph (C) under Section 5.2(c)(iii) of the OPRA Plan that would address the display of ''consolidated Options Information'' by specifying two requirements. *See* proposed Section 5.2(c)(iii)(C) of the OPRA Plan. First, Cboe proposes to require that dissemination of ''consolidated Options Information'' for the same classes or series of options that are included in the ''Proprietary Information'' must be displayed in a context in which a trading or order-routing decision can be implemented (*i.e.,* the point of order entry or modification). Cboe states that its proposal would not require the display of consolidated data when ''market data is being provided on a purely informational website that does not offer any trading or order-routing capability.'' Notice, *supra* note 3, 89 FR 3966. Second, Cboe proposes to require that ''consolidated Options Information'' must also be provided if a registered representative of a broker-dealer provides a quotation to a customer that can be used to assess the current market or the quality of trade execution. Specifically, proposed Section 5.2(c)(iii)(C) of the OPRA Plan would state the following requirement: ''dissemination of consolidated Options Information for the same classes or series of options that are included in the Proprietary Information must be displayed in a context in which a trading or order-routing decision can be implemented (*i.e.,* the point of order entry or modification). Consolidated Options Information must also be provided if a registered representative of a broker-dealer provides a quotation to a customer that can be used to assess the current market or the quality of trade execution.''

III. Discussion

Under the terms of the OPRA Plan, the plan ''may be amended from time to time when authorized by the affirmative vote of all of the [Plan participants], subject to the approval of the [Commission].'' [33] Cboe did not obtain such authorization for the Proposed Amendment.[34]

Though the Proposed Amendment did not receive the affirmative vote of all of the members of the OPRA Plan in accordance with Section 10.3 of the OPRA Plan,[35] Cboe nevertheless states that the Proposed Amendment was appropriately filed with the Commission pursuant to Rule 608(a)(1) of Regulation NMS, which provides that ''[a]ny two or more self-regulatory organizations, acting jointly, may file a national market system plan or may propose an amendment to an effective national market system plan. . . .'' [36] Cboe states that more than two self-regulatory organizations (''SROs'')—Cboe Options, C2, BZX, and EDGX—jointly filed the Proposed Amendment with the Commission.[37]

Cboe states that under Rule 608(a)(1) of Regulation NMS ''there is no requirement to separately satisfy the voting requirements of the OPRA Plan'' for plan amendments and the OPRA Plan ''nowhere directs that its amendment avenue is the *only* path to propose an amendment. . . .'' [38] Under Cboe's view, Section 10.3 of the OPRA Plan provides ''*one* method for seeking to amend the OPRA Plan'' where Rule 608(a)(1) provides an ''additional method[ ]'' to do so.[39] Cboe states that Section 10.3 of the OPRA Plan ''does not foreclose any other route'' to amend the Plan, ''let alone one authorized by Commission regulation.'' [40] Rather, Cboe states that Section 10.3 of the OPRA Plan provides an avenue for ''OPRA as an entity to offer an amendment, unanimously'' and, in contrast, Rule 608(a)(1) of Regulation NMS ''offers an amendment path where exchanges, without unanimous consent of OPRA members, wish to bring a proposed amendment to the Commission's and public's attention.'' [41] Accordingly, Cboe states that it has complied with both the OPRA Plan and Regulation NMS.[42]

The OPRA Operating Committee disagrees with Cboe and states that the Commission should disapprove the Proposed Amendment ''as improperly filed, violating the explicit terms of the OPRA Plan.'' [43] OPRA states that the Proposed Amendment ''did not receive unanimous approval from all of the [Plan participants] as required by the OPRA Plan.'' [44] Stating that ''Rule 608(c) provides that, '[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant,' '' OPRA states that ''[t]he general requirements of Rule 608(a)(1) cannot override the more specific requirements set forth in the OPRA Plan.'' [45]

OPRA further states that ''Cboe is attempting to circumvent the requirements of the OPRA Plan through its incorrect interpretation of Rule 608'' and states that ''[n]ever has an NMS Plan amendment been submitted in the manner Cboe utilized rather than in accordance with the explicit requirements of the relevant NMS Plan.'' [46] OPRA states that ''by requiring heightened approval requirements, the market can be assured that any proposal has broad support among entities that have competing interests, thereby ensuring that only those proposals that are viewed as truly beneficial to the national market system are proposed.'' [47] OPRA states that Cboe's view would render Section 10.3 of the OPRA Plan as ''superfluous'' and states that ''Rule 608(a)(1) must be interpreted as a floor to the requirements of submitting an NMS plan or amendment,

[33] *See* OPRA Plan, Article X, Section 10.3 (Amendments).

[34] *See* Notice, *supra* note 3, 89 FR 3963.

[35] *See id.* at 3965.

[36] *See* Letter from Corinne Klott, Assistant General Counsel, Cboe Global Markets, dated Feb. 23, 2024 (''Cboe Letter''), at 2. *See also* 17 CFR 242.608(a)(1).

[37] *See* Cboe Letter, *supra* note 36, at 2 (emphasis in original).

[38] *Id.* at 2.

[39] *Id.* at 1 (emphasis in original).

[40] *Id.* at 3.

[41] *Id.*

[42] *See id.*

[43] *See* Letter from James P. Dombach, Davis Wright Tremaine LLP, dated Feb. 12, 2024 (''OPRA Letter''), at 1.

[44] *Id.* at 2.

[45] *Id.*

[46] *Id.*

[47] *Id.*

and the [Plan participants] have agreed to the heightened requirements set forth in the OPRA Plan (which have been approved by the Commission).'' [48]

A group of affiliated OPRA Plan participants similarly requested that the Commission disapprove the Proposed Amendment.[49] Stating that ''Rule 608(c) under Regulation NMS provides that, 'Each self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant,' '' and that ''the [Proposed] Amendment did not receive the affirmative vote of all of the members of the OPRA Plan pursuant to Section 10.3 of the OPRA Plan,'' the commenter states that ''Cboe's submission of the [Proposed] Amendment violated Rule 608(c).'' [50] The commenter further states that

> Cboe's reading of Rule 608(a)(1)—that it alone can move to amend the OPRA Plan without regard to the views of other OPRA members—is nonsensical, contrary to Rule 608 as a whole, and, if accepted by the Commission, would undermine the ability of all national market system plans to govern themselves. Cboe is contending, in effect, that any two SROs disappointed in the outcome in any NMS plan deliberations should be able to file their proposal with the Commission and rehash the same debate in a different forum. This will inject uncertainty in all NMS plan operations, and unnecessarily complicate the plan amendment process.[51]

Cboe cannot use Rule 608(a)(1) to bypass the requirements of the OPRA Plan. The Plan participants have included a clear and specific amendment clause in the OPRA Plan (Article X, Section 10.3) to govern the process of amending the Plan by the Plan participants. This amendment clause provides the specific requirements for amendments of the Plan and is more stringent than the requirements of Rule 608(a)(1). That is, the Plan requires unanimous participant approval for plan amendments, and the Commission approved the OPRA Plan with that unanimous consent amendment requirement.[52] Such provisions are not uncommon, as other NMS Plans contain requirements to amend that are more restrictive than Rule 608 [53] though some contain no general amendment provision.[54] Rule 608(a)(1) provides the minimum for plan amendments, but the Commission has approved many NMS Plans that include additional criteria that must be met for plan amendments to be filed with the Commission.[55]

Rule 608 permits the inclusion in NMS Plans of more stringent requirements for plan amendments that go beyond the ''any two or more SROs acting jointly'' minimum requirement in Rule 608. Specifically, the Rule states that any NMS Plan or amendment filed with the Commission must be accompanied by certain statements and representations, including ''[i]n the case of a proposed amendment, a statement that such amendment has been approved by the sponsors in accordance with the terms of the plan.'' [56] In Cboe's Proposed Amendment, it stated ''Not Applicable'' in response to that requirement,[57] though an applicable provision does exist and was not satisfied. As stated by OPRA, Cboe has not complied with the terms of Section 10.3 of the OPRA Plan in that it failed to obtain the affirmative vote of all Plan participants to amend the OPRA Plan as required by the OPRA Plan.[58]

When reviewing amendments to an NMS Plan pursuant to Rule 608(b), the Commission evaluates whether a proposed amendment ''is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [59]

The terms of the OPRA Plan are applicable to Cboe as Plan participants, and therefore unanimous agreement was needed for the amendment. Accordingly, the Commission cannot make a finding that the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.[60]

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 11A of the Act, and Rule 608 thereunder, that the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

It is therefore ordered, pursuant to Section 11A of the Act, and Rule 608(b)(2) thereunder, that the Proposed Amendment (File No. 8–420) be, and hereby is, disapproved.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–26959 Filed 11–18–24; 8:45 am]

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[48] *Id.*

[49] *See* Letter from Greg Ferrari, Vice President, U.S. Options, Nasdaq, dated Feb. 12, 2024 (''Nasdaq Letter''), at 2.

[50] *Id.* at 2.

[51] *Id.*

[52] *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981), 22 SEC. Docket 484 (Mar. 31, 1981). *See also* OPRA Plan, Article X, Section 10.3 (Amendments).

[53] *See, e.g.,* 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 Privilege Basis, Article XVI (Modifications to the Plan), *available at https://www.utpplan.com/utp_plan.*

[54] *See, e.g.,* Plan for the Purpose of Developing and Implementing Procedures to Facilitate the Listing and Trading of Standardized Options, *available at https://www.theocc.com/getmedia/198bfc93-5d51-443c-9e5b-fd575a0a7d0f/options_listing_procedures_plan.pdf.*

[55] Rule 608 would, however, apply where an NMS Plan is silent on the topic and does not provide a specific voting clause to govern amendments.

[56] *See* 17 CFR 242.608(a)(4)(ii)(E).

[57] Notice, *supra* note 3, 89 FR 3967.

[58] *See* 17 CFR 242.608(c) (''Each [SRO] shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant.'').

[59] 15 U.S.C. 78k–1(b)(2).

[60] In light of Cboe's failure to obtain the required affirmative vote for the Proposed Amendment, the Commission need not make a determination on the merits of the proposal.

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

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101611; File No. SR–PEARL–2024–50]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

November 13, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2024, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.