

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100017; File No. 4–757]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data

April 23, 2024.

I. Introduction

On October 23, 2023, 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., NYSE National, Inc., and Financial Industry Regulatory Authority, Inc. (collectively, the “SROs” or “Participants”) filed with the Securities and Exchange Commission (“Commission”) a proposed new single national market system plan governing the public dissemination of real-time consolidated equity market data for national market system (“NMS”) stocks (the “CT Plan”). The proposed CT Plan was published for comment in the *Federal Register* on January 25, 2024.¹

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,² to determine whether to approve or disapprove the proposed CT Plan or to approve it with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.³

II. Background

On September 1, 2023, the Commission issued an amended order directing the SROs to submit a new national market system plan (“NMS plan”) regarding consolidated equity market data to replace the three NMS plans (“Equity Data Plans”) ⁴ that

¹ See Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 99403 (Jan. 19, 2024), 89 FR 5002 (Jan. 25, 2024) (“Notice”).

² 17 CFR 242.608(b)(2)(i).

³ Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-757/4-757.htm>.

⁴ The three Equity Data Plans that currently govern the collection, consolidation, processing, and dissemination of consolidated equity market data via the exclusive securities information processors (“SIPs”) are: (1) the Consolidated Tape Association Plan (“CTA Plan”); (2) the

govern the public dissemination of real-time consolidated market data for NMS stocks,⁵ and to include specified provisions in the proposed NMS plan.⁶ The SROs filed the proposed CT Plan pursuant to the Amended Governance Order.⁷

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed CT Plan

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁸ and Rules 700 and 701 of the Commission’s Rules of Practice,⁹ to determine whether to approve or disapprove the proposed CT Plan or to approve it with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment. The Commission is instituting proceedings to have sufficient time to consider the issues raised by the proposed CT Plan, including comments received. 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 CT Plan to inform the Commission’s analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission “shall approve 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 plan . . . 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 Securities Exchange Act of 1934 (“Exchange Act”).¹⁰ Rule 608(b)(2) of Regulation NMS further provides that the Commission shall disapprove a national

Consolidated Quotation Plan (“CQ 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 (“UTP Plan”).

⁵ Amended Order Directing the Exchanges and the Financial Industry Regulatory Authority, Inc., to File a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 98271 (Sept. 1, 2023), 88 FR 61630, 61631 (Sept. 7, 2023) (File No. 4–757) (“Amended Governance Order”).

⁶ See *id.* at 61639–41.

⁷ See Notice, *supra* note 1, 89 FR at 5003.

⁸ 17 CFR 242.608.

⁹ 17 CFR 201.700; 17 CFR 201.701.

¹⁰ See 17 CFR 242.608(b)(2).

market system plan or proposed amendment if it does not make such a finding.¹¹ In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,¹² the Commission is providing notice of the grounds for disapproval under consideration:

1. Whether the proposed CT Plan is consistent with the Amended Governance Order;

2. Whether, consistent with Rule 608(b)(2) of Regulation NMS,¹³ the terms of the proposed CT Plan are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act;

3. Whether modifications to the proposed CT Plan, or conditions to its approval, would be necessary to make the proposed plan 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 Exchange Act;

4. Whether the proposed CT Plan is consistent with Congress’s finding, in section 11A(a)(1)(C)(iii) of the Exchange 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”;¹⁴

5. Whether, consistent with the purposes of section 11A(c)(1)(B) of the Exchange Act, the proposed CT Plan is appropriately structured, and whether its provisions are appropriately drafted, to support the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in NMS stocks, and the fairness and usefulness of the form and content of such information;¹⁵ and

6. Whether, consistent with Rule 608(b)(2) of Regulation NMS,¹⁶ the proposed timeline for implementation in Exhibit F ¹⁷ of the proposed CT Plan is necessary or appropriate in the public interest, for the protection of investors

¹¹ See *id.*

¹² 17 CFR 242.608(b)(2)(i).

¹³ See 17 CFR 242.608(b)(2).

¹⁴ 15 U.S.C. 78k–1(a)(1)(C)(iii).

¹⁵ See 15 U.S.C. 78k–1(c)(1)(B).

¹⁶ See 17 CFR 242.608(b)(2).

¹⁷ See Notice, *supra* note 1, 89 FR at 5027–29.

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 Exchange Act.

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."¹⁸ 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.¹⁹ Any failure by the Participants 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 Exchange Act and the applicable rules and regulations thereunder.²⁰

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

1. What are commenters' views on whether the proposed CT Plan is consistent with Section 11A or any other provisions of the Exchange Act, or the rules and regulations thereunder?

2. Should any elements of the proposed timeline in Exhibit F²¹ of the proposed CT Plan be shortened to ensure that implementation of the proposed CT Plan can be achieved within a reasonable time? If so, which ones and why? Should any elements of the proposed timeline be extended? If so, which ones and why? If the Commission should modify any elements of the proposed timeline, how specifically should it change them? Should the Commission modify the proposed CT Plan to include a specific required end date for implementation?

Why or why not? And if so, what should that date be and why?

3. Should the Commission modify the sequence of implementation steps identified in Exhibit F of the proposed CT Plan²² to provide for greater efficiencies, such as through increased parallel performance of workstream tasks?²³ If so, what changes should be made? Do commenters believe that the proposed implementation schedule's dependencies—the steps that need to be completed before other steps can begin—are justified or otherwise reasonable? Are there dependencies that could be removed or modified to accelerate implementation of the proposed CT Plan? If so, which ones and why? What advantages or disadvantages, including risks or complications, would be associated with such modifications to the implementation timeline?

4. What are commenters' views of Section 14.1 of the proposed CT Plan,²⁴ which would allow the Operating Committee to lengthen the implementation timelines in Exhibit F by an affirmative vote of the Operating Committee?²⁵ Should the proposed CT Plan include specific standards to be met before the implementation timelines are lengthened? Should any such changes be subject to Commission approval? Why or why not?

5. Should the Commission modify the proposed CT Plan to allow the Operating Committee to appoint one or more of the current Equity Data Plan administrators to serve as interim Administrator(s) for the proposed CT Plan pending the selection and onboarding of a permanent independent Administrator that meets the Amended Governance Order's requirement that the independent plan Administrator shall not "be owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own proprietary market data product for NMS stocks"?²⁶ How might an interim Administrator affect the implementation

schedule for the proposed CT Plan? If the Commission modified the proposed CT Plan to permit interim Administrator(s), should it modify the implementation schedule accordingly? If so, how? What would be the advantages and disadvantages associated with the appointment of such an interim Administrator(s)?

6. Are there additional actions of the proposed CT Plan Operating Committee that should not be subject to the two-thirds-vote requirement in Section 4.3(b) of the proposed CT Plan?²⁷ If so, which actions and why?

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 608(b)(2)(i) of Regulation NMS,²⁸ any request for an opportunity to make an oral presentation.²⁹

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 email to rule-comments@sec.gov. Please include File Number 4-757 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 4-757. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed CT Plan that are filed with the Commission, and all written communications relating to the proposed CT Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the

²² See *id.*

²³ Generally, the SROs believe there are six workstreams associated with the implementation of the proposed CT Plan: (1) Setting up the proposed CT Plan's governance; (2) Developing the proposed CT Plan's fees, policies, and data subscriber agreements; (3) Selecting the new Administrator; (4) Contract negotiations with the new Administrator; (5) Administrator setup; and (6) Retirement of the CTA Plan, CQ Plan, and UTP Plan. See Notice, *supra* note 1, 89 FR at 5003.

²⁴ See Notice, *supra* note 1, 89 FR at 5021.

²⁵ Section 14.1 of the proposed CT Plan provides that the Operating Committee must make a reasonable determination that the timeline needs to be extended and provide written progress reports to the Commission noting the adjustments. See *id.*

²⁶ Amended Governance Order, *supra* note 5, 88 FR at 61640.

²⁷ For example, Section 4.3(c) of the proposed CT Plan lists actions that may be taken by simple majority vote. See Notice, *supra* note 1, 89 FR at 5011.

²⁸ 17 CFR 242.608(b)(2)(i).

²⁹ 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).

¹⁸ 17 CFR 201.701(b)(3)(ii).

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Notice, *supra* note 1, 89 FR at 5027-29.

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 Participants' principal offices. 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 4-757 and should be submitted on or before May 20, 2024. Rebuttal comments should be submitted by June 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100014; File No. SR-NYSEArca-2023-70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Ethereum Trust Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)

April 23, 2024.

On October 10, 2023, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the Grayscale Ethereum Trust ("Trust") under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on October 27, 2023.³

³⁰ 17 CFR 200.30-3(a)(85).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98780 (Oct. 23, 2023), 88 FR 73892. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370.htm>.

On December 5, 2023, pursuant to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On January 25, 2024, the Commission instituted proceedings under section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On March 15, 2024, the Exchange filed Amendment No. 1, which replaced and superseded the proposed rule change in its entirety. On April 2, 2024, the Commission published notice of Amendment No. 1 to the proposed rule change.⁸

Section 19(b)(2) of the Act⁹ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on October 27, 2023.¹⁰ The 180th day after publication of the proposed rule change is April 24, 2024. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1, and the issues raised therein. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,¹¹ designates June 23, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change, as

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99082, 88 FR 85962 (Dec. 11, 2023). The Commission designated January 25, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 99428, 89 FR 6155 (Jan. 31, 2024).

⁸ See Securities Exchange Act Release No. 99887, 89 FR 24534 (Apr. 8, 2024).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ See *supra* note 3 and accompanying text.

¹¹ 15 U.S.C. 78s(b)(2).

modified by Amendment No. 1 (File No. SR-NYSEArca-2023-70).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100016; File No. SR-NASDAQ-2023-045]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the iShares Ethereum Trust Under Nasdaq Rule 5711(d), Commodity-Based Trust Shares

April 23, 2024.

On November 21, 2023, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the iShares Ethereum Trust ("Trust") under Nasdaq Rule 5711(d), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on December 11, 2023.³

On January 24, 2024, pursuant to section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On March 4, 2024, the Commission instituted proceedings under section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On April 19, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced

¹² 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99081 (Dec. 5, 2023), 88 FR 85945. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nasdaq-2023-045/srnasdaq2023045.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99419, 89 FR 5970 (Jan. 30, 2024).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 99665, 89 FR 16811 (Mar. 8, 2024).