

February 12, 2024

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. 4-820: Options Price Reporting Authority; Notice of Filing of Proposed Amendment to Modify Section 5.2(c)(iii) of the OPRA Plan Relating to Dissemination of Exchange Proprietary Data Information

Dear Ms. Countryman:

The OPRA Operating Committee (“OPRA”) appreciates the opportunity to submit this comment letter in connection with the above-referenced proposal (the “Proposal”). OPRA believes that the Proposal should be disapproved by the Securities and Exchange Commission (“SEC” or the “Commission”) as improperly filed, violating the explicit terms of the OPRA Plan. Importantly, the Proposal was not approved and proposed in accordance with the explicit terms of the OPRA Plan, i.e., by all Members of the OPRA Plan, but instead solely by the Cboe family of exchanges (“Cboe”).¹

Cboe has submitted the Proposal purportedly in accordance with Rule 608(a)(1) of Regulation NMS, which provides:

Any two or more self-regulatory organizations, acting jointly, ... may propose an amendment to an effective national market system plan (“proposed amendment”) 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.²

¹ Prior to Cboe’s submission of the Proposal, OPRA engaged an outside attorney to analyze relevant language and give an informed opinion on the meaning of the text of the OPRA Plan. The result of that analysis was a memo provided to OPRA that was reviewed and accepted during OPRA’s quarterly meeting. Cboe’s Proposal tries to upend this process by proposing an amendment that contradicts the interpretation agreed upon by OPRA.

² 17 CFR 242.608(a)(1).

However, the appropriate governing authority for a Member to submit a proposal for an amendment to the OPRA Plan is Section 10.3 of the OPRA Plan, which provides that the plan “may be amended from time to time when authorized by the affirmative vote of *all of the Members*, subject to the approval of the Securities and Exchange Commission.”³ The Proposal did not receive unanimous approval from all of the Members as required by the OPRA Plan. The general requirements of Rule 608(a)(1) cannot override the more specific requirements set forth in the OPRA Plan. Importantly, 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.”

Further, each National Market System (“NMS”) Plan has amendment requirements that differ from the language set forth in Rule 608(a)(1) upon which Cboe relies. For instance, the CQ, CTA, and UTP Plans all have unanimous approval requirements for most amendments, akin to the requirements set forth in the OPRA Plan. The CAT Plan has a two-thirds or unanimous approval requirement depending on the type of amendment being proposed. Cboe’s proposed interpretation of Rule 608(a)(1) would render these provisions superfluous. Rule 608(a)(1) must be interpreted as a floor to the requirements of submitting an NMS plan or amendment, and the Members have agreed to the heightened requirements set forth in the OPRA Plan (which have been approved by the Commission).

In fact, the SEC recently ordered exchanges and FINRA to file an NMS plan that would replace the CQ, CTA, and UTP Plans. As part of that order, the SEC required the new NMS plan to have a two-thirds voting requirement for most amendments, as opposed to the unanimous voting requirement currently set forth in the equity plans.⁴ If Rule 608 could be used in the manner suggested by Cboe, the SEC’s order to change the voting requirements would have been unnecessary.

Further, Cboe’s interpretation would have deleterious effects. First, as is the case with the Proposal, any two exchanges would be able to propose sweeping changes to the national market system without input or support from the entire industry. 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. Without abiding by the requirements set forth in NMS Plans, any exchange family (such as Cboe here) would be permitted to propose endless amendments as it deems appropriate, potentially forcing the industry to analyze and comment on proposals that lack broad support.

Cboe is attempting to circumvent the requirements of the OPRA Plan through its incorrect interpretation of Rule 608. Never has an NMS Plan amendment been submitted in the manner Cboe utilized rather than in accordance with the explicit requirements of the relevant

³ See Limited Liability Company Agreement of Options Price Reporting Authority, LLC Art X Sec 10.3 (emphasis added). The language of Section 10.3 was adopted by the Members, including Cboe.

⁴ See *Amended Order Directing the Exchanges and the Financial Industry Regulatory Authority, Inc., to File a National Market System Plan Regarding Consolidated Equity Market Data*, Exchange Act Release No. 34-98271 (Sept. 1, 2023), 88 FR 61630 (Sept. 7, 2023).

Vanessa Countryman

February 12, 2024

Page 3 of 3

NMS Plan. Requiring approval of all Members for any amendment to the OPRA Plan is not only required by the governing documents, but it is essential for the smooth operation of the national market system, ensuring that changes to an NMS Plan have widespread support to promote the SEC's mission of maintaining fair, orderly, and efficient markets.

Conclusion

OPRA opposes the Proposal because it has been submitted by Cboe in contravention of Section 10.3 of the OPRA Plan. Cboe's failure to receive the support and approval of its fellow Members means Cboe did not have proper authority to propose the amendment. Therefore, the SEC should disapprove the Proposal.

Respectfully Submitted,

/s/ James P. Dombach

James P. Dombach