



**Greg Ferrari**  
Vice President  
151 WEST 42<sup>ND</sup> STREET  
NEW YORK, NY 10036

February 23, 2023

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

Re: SR-CBOE-2023-009

Dear Ms. Countryman:

The Nasdaq Stock Market LLC, Nasdaq PHLX LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC markets (collectively “Nasdaq”) seek to comment on a recent proposal filed by Cboe Exchange, Inc. (“Cboe”) to establish a market data product called the Cboe One Options Feed (“Cboe One Feed”).<sup>1</sup> Nasdaq believes that the Cboe One Feed Proposal may contravene the terms of the OPRA Plan.<sup>2</sup>

In describing the Cboe One Feed, Cboe states that market participants may substitute any individual or consolidated exchange top-of-book feeds with similar feeds from other exchanges and/or through OPRA with respect to the data contained in the proposed Cboe One Feed.<sup>3</sup> The Cboe One Feed Proposal thereafter states:

[m]oreover, exchange top-of-book data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors or vendors are required by any rule or regulation to make this data available. Accordingly, distributors and vendors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. **Moreover, all broker-dealers**

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<sup>1</sup> See Securities Exchange Act Release No. 96885 (February 10, 2023), 88 FR 10165 (February 16, 2023) (SR-Cboe-2023-009) (Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Data Product Called the Cboe One Options Feed) (“Cboe One Feed Proposal”).

<sup>2</sup> See Limited Liability Company Agreement of the Options Price Reporting Authority, LLC (“OPRA Plan”).

<sup>3</sup> 88 FR 10168.

**involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement.** As such, all proprietary data feeds are optional.<sup>4</sup>

The statements that market participants may substitute any individual or consolidated top-of-book feed with similar feeds obtained through OPRA, and that only broker-dealers involved in order routing must take consolidated data from OPRA, are both misleading and inconsistent with the OPRA Plan. Section 5.2(c) of the OPRA Plan, as discussed below, requires all persons to take OPRA if they elect to purchase the Cboe One Feed. In contravention of this requirement, the Cboe One Feed Proposal claims that the obligation to subscribe to OPRA is solely limited to broker-dealers involved in order routing when acquiring the Cboe One Feed. There is no such limitation to broker-dealers involved in order routing anywhere in the OPRA Plan.

Section 5.2(c) of the OPRA Plan, titled “Dissemination of Last Sale Reports, Quotation Information and Other Information,” provides for the uniform, nondiscriminatory dissemination of consolidated Options Information, and states within Section 5.2(c)(iii) that,

[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 [emphasis added].

The plain language of the OPRA Plan specifically requires that any person that subscribes to the Cboe One Feed have equivalent access to consolidated Options Information disseminated by OPRA. The term “person” includes all broker-dealers as well as persons who are not registered as broker-dealers. The current language within the Cboe One Feed Proposal contravenes the OPRA Plan by limiting the obligation to have equivalent access to OPRA to broker-dealers involved in order routing when acquiring the Cboe One Feed without basis in the OPRA Plan or policy.

Nasdaq believes that the Cboe One Feed Proposal should clearly explain the obligations of the OPRA Plan by specifically noting that any person who subscribes to the Cboe One Feed must have equivalent access to OPRA and remove the misleading language identified above. Further, the Cboe One Feed Proposal should state that all marketing materials related to the Cboe One Feed

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<sup>4</sup> Id. at 10168 (emphasis added).

will clearly indicate this requirement to ensure compliance with the OPRA Plan. The Cboe One Feed Proposal should not be allowed to become effective absent these important substantive corrections.

Nasdaq notes that other exchanges may file similar proposals which may proliferate market data feeds likely resulting in fragmentation.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Ferrari", with a stylized flourish at the end.

Greg Ferrari  
Vice President, U.S. Options

Cc: Ted Venuti, Division of Trading and Markets  
Richard Holley, Division of Trading and Markets