

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT of 1934
Release No. 101899 / December 12, 2024

File No. S7-30-22

In the Matter of the Motion)	ORDER GRANTING PARTIAL STAY
By Nasdaq, Inc.,)	
The Nasdaq Stock Market LLC,)	
Nasdaq BX, Inc., Nasdaq PHLX LLC,)	
Cboe Global Markets, Inc.,)	
Cboe BZX Exchange, Inc.,)	
Cboe BYX Exchange, Inc.,)	
Cboe EDGA Exchange, Inc., and)	
Cboe EDGX Exchange, Inc.)	
)	
For Stay of Effect of Amendments)	
to Rules 610 and 612 of Regulation NMS)	
)	
)	

On September 18, 2024, the Commission issued *Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders*, Rel. No. 34-101070 (Sept. 18, 2024), 89 Fed. Reg. 81620 (Oct. 8, 2024) (the “Final Rules”), which, among other things, promulgated amendments to Rules 610 and 612 of Regulation National Market System (“Regulation NMS”).

Between September 18, 2024, and October 30, 2024, petitions seeking review of the Final Rules were filed in the D.C. Circuit.¹ These actions were consolidated and the parties agreed to expedited briefing on the petitions for review.²

On December 3, 2024, petitioners Nasdaq, Inc., The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Cboe Global Markets, Inc., Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc. filed with the Commission a motion to stay the effect of the Final Rules’

¹ *We The Investors et al., v. SEC*, No. 24-1302 (D.C. Cir., filed Sept. 18, 2024); *We The Investors et al., v. SEC*, No. 24-1303 (D.C. Cir., filed Sept. 18, 2024); *We The Investors et al., v. SEC*, No. 24-1317 (D.C. Cir., filed Oct. 7, 2024); *We The Investors et al., v. SEC*, No. 24-1319 (D.C. Cir., filed Oct. 8, 2024); *Cboe Global Markets, Inc., et al., v. SEC*, No. 24-1350 (D.C. Cir., filed Oct. 30, 2024).

² *Cboe Global Markets, Inc., et al. v. SEC*, No. 24-1350 (D.C. Cir.), Doc. Nos. 2084891, 2086101.

amendments to Rules 610 and 612 pending resolution of their petition for review in the D.C. Circuit.

The Commission has discretion to grant a stay of its rules pending judicial review if it finds that “justice so requires.”³ The Commission has determined to exercise its discretion to stay the Final Rules’ amendments to Rules 600(b)(89)(i)(F) (including in the definition of regulatory data an indicator of the applicable minimum pricing increment required under Rule 612), 610(c) (reducing the access fee caps for protected quotations), and 612 (reducing the minimum pricing increment for quotations and orders for certain NMS stocks) pending the completion of judicial review of the petitions for review.

As the Commission concluded in unanimously adopting the Final Rules, they are consistent with applicable law and within the Commission’s long-standing authority to oversee and regulate the national market system. In issuing a stay, the Commission is not departing from that view. Thus, the Commission will continue vigorously defending the Final Rules’ validity in court and looks forward to expeditious resolution of the litigation. But the Commission finds as a prudential matter that, under the circumstances presented, a stay of the Final Rules’ amendments to Rules 600(b)(89)(i)(F), 610(c), and 612 of Regulation NMS is consistent with what justice requires. Among other things, a stay avoids the potential for market disruption and regulatory uncertainty that could occur if those amendments were to become effective during the pendency of a challenge to their validity. Because the parties have already agreed to an expedited schedule to facilitate prompt review of petitioners’ challenge, those challenges to the amendments’ validity should be resolved as quickly as possible. The Commission has previously stayed its rules pending judicial review in similar circumstances. *See, e.g., In the Matter of Enhancement and Standardization of Climate-Related Disclosures for Investors, Rel. Nos. 33-11280, 34-9908 (Apr. 4, 2024); Rule 610T of Regulation NMS, Rel. No. 34-85447 (Mar. 28, 2019); Facilitating Shareholder Director Nominations, Rel. Nos. 33-9149, 34-63031, IC-29456 (Oct. 4, 2010).*

The Commission is not staying the effective date for the Final Rules’ amendments to Rule 610(d) (requiring that all exchanges fees charged and rebates paid for execution of an order of NMS stock be determinable at the time of execution). As the Commission stated in adopting the Final Rules, the amendments to Rule 610(d) operate independently from the amendments to Rules 610(c) and 612. In their motion, petitioners have not made any substantive argument concerning the validity of the amendments to Rule 610(d) nor have they explained why a stay of those amendments is warranted. Accordingly, the Commission sees no reason to delay the benefits to investors, including the additional certainty, transparency, and clarity of exchange fee schedules, of the Final Rules’ amendments to Rule 610(d).

³ Exchange Act Section 25(c)(2), 15 U.S.C. § 78y(c)(2). Section 705 of the Administrative Procedure Act likewise provides that an agency may stay its own action pending judicial review when it finds that “justice so requires.” 5 U.S.C. § 705.

Accordingly, it is ORDERED, pursuant to Exchange Act Section 25(c)(2), that the motion of petitioners filed on December 3, 2024 for a stay of the effect of the Final Rules' amendments to Rules 610 and 612 of Regulation NMS pending resolution of their petition for review be, and hereby is, granted in part.⁴ The Final Rules' amendments to Rules 600(b)(89)(i)(F),⁵ 610(c), and 612 are stayed pending the completion of judicial review of the petitions for review.

By the Commission.

Vanessa A. Countryman
Secretary

⁴ The stay issued by this Order is limited to the Final Rules' amendments to Rules 600(b)(89)(i)(F), 610(c) and 612 of Regulation NMS. It does not stay the Final Rules' amendments to Rule 610(d), Rule 603(b), and the definitions of odd-lot information and round lot in Rule 600(b), nor does it stay any other Commission Rules or Guidance.

⁵ Rule 600(b)(89)(iv) requires the primary listing exchanges to provide information required under Rule 600(b)(89)(i)(E) related to a round lot indicator, and Rule 600(b)(89)(i)(F) related to a minimum pricing increment indicator to the applicable plan processors for dissemination. In light of this Order, the primary listing exchanges will not be required to provide the information with regard to Rule 600(b)(89)(i)(F) to the applicable plan processors for dissemination.