

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88704; File No. 4-631)

April 21, 2020

Joint Industry Plan; Order Approving the Twentieth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.

I. Introduction

On February 14, 2020, NYSE Group, Inc., on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility (“the Plan”): Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., the Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, Long-Term Stock Exchange (“LTSE”), NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., NYSE National Inc., and NYSE American LLC (collectively, the “Participants”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 608 thereunder,² a proposal to amend the Plan (“Twentieth Amendment”).³ The proposed Twentieth Amendment was published in the Federal Register on March 23, 2020.⁴ The Commission

¹ 15 U.S.C 78k-1(a)(3).

² 17 CFR 242.608.

³ See Letter from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Vanessa Countryman, Secretary, Commission, dated February 13, 2020.

⁴ See Securities Exchange Act Release No. 88406 (March 17, 2020), 85 FR 16408 (“Notice”).

received no comments on the proposal. This Order approves the Twentieth Amendment to the Plan as proposed.

II. Background

The Plan was approved in May 2012 on a pilot basis to “allow the Participants and the public to gain valuable practical experience with Plan operations during the pilot period” and to assess “whether further modifications of the Plan are necessary or appropriate prior to final approval.”⁵ On April 11, 2019, the Commission approved the Eighteenth Amendment to the Plan, which transitioned the Plan from operating on a pilot to a permanent basis and adopted a mechanism for periodic review and assessment of the Plan.⁶ As part of the mechanism for periodic review and assessment of the Plan, the Participants committed to provide the Commission with certain data on a quarterly and annual basis. In particular, the Participants agreed to provide the Commission, and make publicly available, quarterly reports providing basic statistics that could be used to identify trends in the performance and impact of the Plan on market activity. The Participants added to the Plan Section II.B of Appendix B (“Appendix B.II.B”) to specify the specific data points that would be included in the quarterly reports.

III. Description of the Proposal

The Participants propose to amend Appendix B.II.B to improve its clarity and transparency by revising and supplementing the current language.⁷ The Participants stated that,

⁵ See Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Plan Approval Order”) (approving Plan as amended).

⁶ See Securities Exchange Act Release No. 85623, 84 FR 16086 (April 17, 2019) (“Eighteenth Amendment Approval Order”).

⁷ The Participants also propose to make a non-substantive amendment to the Plan to reflect the name change of Chicago Stock Exchange, Inc. to NYSE Chicago, Inc and to change its address.

in the course of preparing to compile and aggregate the data required for the first quarterly report, they determined that the language of Appendix B.II.B could be improved by, among other things: (a) emphasizing from the outset that the data should be aggregated across primary listing exchanges, (b) specifying the specific partitions that should be applied to each data point, (c) specifying the specific distribution statistics that should be applied to each data point, and (d) providing additional clarity as to what reopening data should be included.⁸

IV. Discussion

The Commission finds that the Twentieth Amendment, as proposed, is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the Twentieth Amendment is consistent with Section 11A of the Act⁹ and Rule 608 thereunder¹⁰ in that the proposal is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and that it removes impediments to, and perfects the mechanism of, a national market system.

The Commission continues to believe, as it stated in the Eighteenth Amendment Approval Order, that “the ongoing review and assessment requirements proposed by the Participants will both facilitate a robust, data-driven assessment of the Plan’s effectiveness and provide the Commission and the public sufficient transparency of the effectiveness of the LULD mechanism necessary to help ensure the Plan remains designed to achieve its objective.”¹¹ We believe that the changes proposed in the Twentieth Amendments are consistent with these

⁸ See Notice supra note 4 at 85 FR 16409-11, for a more detailed description of proposed changes to Appendix B.II.B.

⁹ 15 U.S.C. 78k-1.

¹⁰ 17 CFR 242.608.

¹¹ See Eighteenth Amendment Approval Order, supra note 6, at 84 FR 16086.

previously stated policy goals. Specifically, the proposed changes, which effectuate an important clarification concerning the method for aggregating data and precise descriptions of the required data elements for each quarterly report, will improve the Participants' ability to produce for the Commission and the public high-quality quarterly reports. For these reasons, the Commission finds that the proposed changes to Appendix B.II.B contained in the Twentieth Amendment are consistent with Section 11A of the Act and Rule 608 thereunder.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act¹² and Rule 608 thereunder,¹³ that the Twentieth Amendment to the Plan (File No. 4-631) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹² 15 U.S.C. 78k-1.

¹³ 17 CFR 242.608.

¹⁴ 17 CFR 200.30-3(a)(29).