

arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁷⁸

The Commission asks that commenters address the sufficiency and merit of NYSE National's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. 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 No. SR-NYSENAT-2020-05 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 No. SR-NYSENAT-2020-05. The 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 rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal

office of NYSE National. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File No. SR-NYSENAT-2020-05 and should be submitted on or before April 28, 2020. Rebuttal comments should be submitted by May 12, 2020.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁷⁹ that File No. SR-NYSENAT-2020-05, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88532; File No. 4-443]

Joint Industry Plan; Order Approving Amendment No. 5 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options To Adopt a Penny Interval Program

April 1, 2020.

I. Introduction

On July 18, 2019, BOX Exchange LLC; Cboe BZX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe Exchange, Inc.; Cboe EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX Emerald, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; NYSE American, LLC; NYSE Arca, Inc. (collectively, "Exchanges"); and The Options Clearing Corporation ("OCC") (together with the OCC, "Plan Sponsors") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 11A(a)(3) of the Securities Exchange Act

of 1934 ("Act")¹ and Rule 608 thereunder,² a proposal to amend the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the "Plan").³ Amendment No. 5 was published for comment in the **Federal Register** on December 17, 2019.⁴

The Commission received no comment letters regarding the Amendment. This order approves Amendment No. 5 to the Plan.

II. Description of the Amendment

A. Background

In January 2007, the Commission approved rules that allowed the six registered options exchanges that then existed to begin quoting certain multiply listed options classes overlying thirteen stocks and Exchange Traded Funds ("ETFs") in penny increments pursuant to a six-month Penny Pilot

¹ 15 U.S.C. 78k-1(a)(3).

² 17 CFR 242.608.

³ See Letter from BOX Exchange LLC, CBOE BZX Exchange, Inc., CBOE Exchange, Inc., CBOE C2 Exchange, Inc., CBOE EDGX Exchange, Inc., Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., NASDAQ GEMX, LLC, NASDAQ ISE, LLC, NASDAQ MRX, LLC, NASDAQ PHLX, LLC, The NASDAQ Stock Market LLC, NYSE American, LLC, NYSE Arca, Inc., and the OCC, to Vanessa Countryman, Secretary, Commission, dated July 18, 2019. ("Amendment No. 5"). On July 6, 2001, the Commission approved the Plan, which was proposed by the American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, OCC, Philadelphia Stock Exchange, Inc., and Pacific Exchange, Inc. See Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). See also Securities Exchange Act Release Nos. 49199 (February 5, 2004), 69 FR 7030 (February 12, 2004) (adding Boston Stock Exchange, Inc. as a Plan Sponsor); 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008) (adding The Nasdaq Stock Market, LLC as a Plan Sponsor); 61528 (February 17, 2010), 75 FR 8415 (February 24, 2010) (adding BATS Exchange, Inc. as a Plan Sponsor); 63162 (October 22, 2010), 75 FR 66401 (October 28, 2010) (adding C2 Options Exchange Incorporated as a Plan Sponsor); 66952 (May 9, 2012), 77 FR 28641 (May 15, 2012) (adding BOX Options Exchange LLC as a Plan Sponsor); 67327 (June 29, 2012), 77 FR 40125 (July 6, 2012) (adding Nasdaq OMX BX, Inc. as a Plan Sponsor); 70765 (October 28, 2013), 78 FR 65739 (November 1, 2013) (adding Topaz Exchange, LLC as a Plan Sponsor); 70764 (October 28, 2013), 78 FR 65733 (November 1, 2013) (adding Miami International Securities Exchange, LLC as a Plan Sponsor); 76822 (January 1, 2016), 81 FR 1251 (January 11, 2016) (adding EDGX Exchange, Inc. as a Plan Sponsor); 77323 (March 8, 2016), 81 FR 13433 (March 14, 2016) (adding ISE Mercury, LLC as a Plan Sponsor); 79897 (January 30, 2017), 82 FR 9263 (February 3, 2017) (adding MIAX PEARL, LLC as a Plan Sponsor); and 85228 (March 1, 2019), 84 FR 8355 (March 7, 2019) (adding MIAX Emerald, LLC as a Plan Sponsor). The full text of the Plan is available at: https://www.theocc.com/components/docs/clearing/services/options_listing_procedures_plan.pdf.

⁴ See Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 ("Notice").

⁷⁸ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁷⁹ 15 U.S.C. 78s(b)(3)(C).

⁸⁰ 17 CFR 200.30-3(a)(57) and (58).

Program (“Penny Pilot”).⁵ The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant.

Following that initial approval, the Commission approved additional Exchange rules that expanded the number of options classes covered by the Penny Pilot.⁶ In each instance, these approvals relied upon the consideration of data periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 options classes, which are among the most actively traded, multiply listed options classes.⁷ The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.⁸

⁵ See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74); 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92); 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR-Amex-2006-106); 55161 (January 24, 2007), 72 FR 4754 (January 24, 2007) (SR-ISE-2006-62); 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR-NYSEArca-2006-73); and 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR-BSE-2006-49).

⁶ See, e.g., Securities Act Release Nos. 56568 (September 27, 2007) (NYSEArca-2007-88); 57559 (March 26, 2008) (NYSEArca-2008-34); and 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (NYSEArca-2009-44).

⁷ See Securities Exchange Act Release Nos. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR-NYSEArca-2009-44); 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009) (SR-ISE-2009-82); 60864 (October 22, 2009), 74 FR 55876 (October 29, 2009) (SR-CBOE-2009-076); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR-NASDAQ-2009-091); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91); 60886 (October 27, 2009), 74 FR 56897 (November 3, 2009) (SR-BX-2009-067); and 61106 (December 3, 2009), 74 FR 65193 (December 9, 2009) (SR-NYSEAmex-2009-74).

⁸ See Securities Exchange Act Release Nos. 87632 (November 26, 2019), 84 FR 66255 (December 3, 2019) (SR-BOX-2019-34); 87740 (December 13, 2019), 84 FR 69800 (December 19, 2019) (CboeBZX-2019-106); 87738 (December 13, 2019), 84 FR 69795 (December 19, 2019) (C2-2019-027); 87739 (December 13, 2019), 84 FR 69801 (December 19, 2019) (CBOE-2019-119); 87741 (December 13, 2019), 84 FR 69805 (December 19, 2019) (CboeEDGX-2019-074); 87606 (November 25, 2019), 84 FR 66030 (December 2, 2019) (MIAX-2019-47); 87608 (November 25, 2019), 84 FR 66046 (EMERALD-2019-36); 87609 (November 25, 2019), 84 FR 66032 (December 2, 2019) (PEARL-2019-34); 87754 (December 16, 2019), 84 FR 70232 (December 20, 2019) (BX-2019-046); 87753 (December 16, 2019), 84 FR 70243 (December 20, 2019) (GEMX-2019-19); 87752 (December 16, 2019), 84 FR 70230 (December 20, 2019) (ISE-2019-33); 87766 (December 16, 2019), 84 FR 70214 (December 20, 2019) (MRX-2019-26); 87746 (December 13, 2019), 84 FR 69803 (December 19, 2019) (Phlx-2019-55); 87831 (December 20, 2019), 84 FR 72013 (December 30, 2019) (Nasdaq-2019-100); 87610 (November 25, 2019), 84 FR 66047 (December 2, 2019) (NYSEArca-2019-83); 87633 (November 26, 2019), 84 FR 66251 (December 3, 2019) (NYSEAmex-2019-51).

B. Description of the Proposal

In light of the imminent expiration of the Penny Pilot, the Plan Sponsors now propose in Amendment No. 5 to the Plan to replace the Penny Pilot by instituting a permanent program (the “Penny Program”) that would permit quoting in penny increments for certain classes of options. Under the terms of this proposal, designated options classes would continue to be quoted in \$0.01 and \$0.05 increments according to the same parameters for the Penny Pilot. In addition, the Penny Program would: (1) Establish an annual review process to add and/or remove options classes from the Penny Program; (2) allow an option class to be added to the Penny Program outside of the annual review process if it is a newly listed option class or a class that experiences significant growth in activity, provided such class meets certain objective criteria; (3) provide that if a corporate action involves one or more options classes in the Penny Program, all adjusted and unadjusted series of the option class would continue to be included in the Penny Program; (4) provide that any series in an option class participating in the Penny Program in which the underlying security has been delisted, or are identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the rules of the Penny Program until all such options have expired; and (5) establish voting provisions governing amendments to the Penny Program.⁹

1. Minimum Quoting Increments and Initial Selection of Options Classes for the Penny Program

The minimum quoting increment requirements that currently apply under the Penny Pilot would continue to apply for options classes included in the Penny Program. Specifically, (i) the minimum quoting increment for all series in the QQQ, SPY, and IWM would continue to be \$0.01, regardless of price; (ii) options classes with a price of less than \$3.00 would be quoted in \$0.01 increments for all series; and (iii) options classes with a price of \$3.00 or

⁹ Amendment No. 5 also proposes to make certain administrative changes to Section 4 of the Plan to replace references to “the adjustment panel” with references to “the OCC” to ensure that the language in the Plan is consistent with changes made in a separate filing. See Securities Exchange Act Release No. 84565 (November 9, 2018), 83 FR 57778 (November 16, 2018) (SR-ODD-2018-01). See also Securities Exchange Act Release No. 69977 (July 11, 2013), 78 FR 42815 (July 17, 2013) (SR-OCC-2013-05). In addition, Amendment No. 5 proposes to make non-substantive ministerial changes to Section 9 of the Plan to update the names and addresses of certain Plan Sponsors.

higher would be quoted in \$0.05 increments for all series.¹⁰

The Penny Program would initially apply to the 363 most actively traded, multiply listed options classes¹¹ that (i) are currently included the Penny Pilot or, (ii) if not currently in the Penny Pilot, overlie securities priced below \$200, or any index at an index level below \$200.¹² As is the case today, the Exchanges will use the OCC rankings and apply these objective criteria to determine which classes are eligible for inclusion in the Penny Program. Once an option class is added to the Penny Program, it would remain in the Program subject to the annual review process described in further detail below.¹³

2. Annual Review Process

The Penny Program provides for an annual review process by which options classes can be added and removed from the Penny Program based on objective criteria. The annual review process is designed to ensure that the most active eligible issues are included in the Penny Program while also preventing a high rate of turnover for issues that are removed from the Penny Program. Specifically, on an annual basis (commencing in December 2020), the OCC would rank all multiply listed options classes based on National Cleared Volume from June 1 through November 30 to determine the most actively traded options classes.¹⁴ Any option class not yet in the Penny Program that is among the 300 most actively traded, multiply listed options

¹⁰ See Proposed Section 3.1 of the Plan.

¹¹ This number is taken from the current number of the options classes in the Penny Pilot. See Notice, *supra* note 4 at 68961.

¹² OCC will rank all multiply listed options classes based on National Cleared Volume for the six-month period ending in the month that the Commission approves proposed Amendment No. 5 to determine whether an option class is among the 363 most activity traded. See Proposed Section 3.1(a) of the Plan. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly expiration Friday of the second full month following approval of the proposed Amendment. See *id.* Certain options classes that currently quote in penny increments pursuant to the Penny Pilot that are not among the 363 most actively traded multiply listed options classes at the time of the initial selection will be subject to the minimum trading increment as described in the rules of the Exchanges. See Notice, *supra* note 4, at 68961. Such changes would be effective on the first trading day of the third full calendar month following the Amendment’s approval date. See Proposed Section 3.1(a) of the Plan.

¹³ See Notice, *supra* note 4, at 68961.

¹⁴ Proposed Section 3.1(b) of the Plan.

classes overlying securities priced below \$200, or an index at an index level below \$200, would be added to the Penny Program on the first trading day in January following the annual review.¹⁵ In addition, based on the annual review, options classes that are ranked between the 300 most actively traded and the 425 most actively traded would continue to be included in the Penny Program,¹⁶ but any option class that falls outside of the 425 most actively traded, multiply listed option class would be removed from the Penny Program and would be subject to the minimum quoting increment rules set forth in the Exchanges' rules, effective on the first day of trading in April.¹⁷

3. Changes to the Composition of the Penny Program Outside of the Annual Review Process

i. Newly Listed Options Classes and Options Classes With Significant Growth in Activity

The Penny Program would specify a process and parameters for including options classes in the Penny Program outside the annual review process in two circumstances. These provisions are designed to provide objective criteria for the Exchanges to add to the Penny Program new options classes in issues with the most demonstrated trading interest from market participants and investors on an expedited basis prior to the annual review, with the benefit that market participants and investors will then be able to trade these new options classes based upon quotes expressed in finer trading increments.

First, Section 3.1(c) provides for certain newly listed options classes to be added to the Penny Program outside of the annual review process, provided that (i) the class is among the 300 most actively traded, multiply listed options classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading; and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Such newly listed options classes added to the Penny Program pursuant to this process would remain in the Penny Program for one full

¹⁵ Proposed Section 3.1(b)(1) of the Plan. After extensive discussion, the Plan Sponsors concluded that including the top 300 classes would ensure that the Penny Program always includes the most active issues. See Notice, *supra* note 4, at 68961–62 and n.14.

¹⁶ Proposed Section 3.1(b) of the Plan. The Plan Sponsors determined that including the top 425 options classes would prevent high turnover rates of classes and thus provide the least disruptive means of implementing the annual rebalancing of the Penny Program. See Notice, *supra* note 4, at 68961–62 and n.14.

¹⁷ Proposed Section 3.1(b)(2) of the Plan.

calendar year and then would be subject to the annual review process.¹⁸

Second, the Penny Program would allow an option class to be added to the Penny Program outside of the annual review process if it is an option class that meets certain specific criteria. Section 3.1(d) provides that an option class may be added to the Penny Program, provided that (i) it is among the 75 most actively traded, multiply listed options classes, as ranked by National Cleared Volume at OCC, for six full calendar months of trading, and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Options classes that are added to the Penny Program pursuant to Section 3.1(d) would remain in the Penny Program for the rest of the calendar year in which they are added and then would be subject to the annual review process.¹⁹

ii. Corporate Actions

Section 3.1(e) specifies a process to address options classes in the Penny Program that undergo a corporate action and is designed to ensure continuous liquidity in the affected options classes. Specifically, if a corporate action involves one or more options classes in the Penny Program, all adjusted and unadjusted series of an option class would continue to be included in the Penny Program.²⁰ Furthermore, neither the trading volume threshold, nor the initial price test would apply to options classes added to the Penny Program as a result of the corporate action. Finally, the newly added adjusted and unadjusted series of the option class would remain in the Penny Program for one full calendar year and then would become subject to the annual review process.

iii. Delisted or Ineligible Options Classes

Section 3.1(f) provides a mechanism to address options classes that have been delisted or those that are no longer eligible for listing. Specifically, any series in an option class participating in the Penny Program in which the underlying has been delisted, or is identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the terms

¹⁸ See Proposed Section 3.1(c) of the Plan.

¹⁹ See Proposed Section 3.1(d) of the Plan.

²⁰ For example, if Company A acquires Company B and Company A is not in the Penny Program but Company B is in the Penny Program, once the merger is consummated and an options contract adjustment is effective, then Company A would be added to the Penny Program and remain in the Penny Program for one calendar year. See Notice, *supra* note 4, at 68963 n.19.

of the Penny Program until all options series have expired.

4. Amendments to the Penny Program

Section 3.1(h) sets forth an amendment process applicable to changes to the Penny Program. Currently, amendments to the Plan (other than an amendment to add a new Plan Sponsor) must be approved unanimously by the Plan Sponsors.²¹ A new and separate process would govern amendments to the Penny Program and any changes to Section 3.1. Under this new process, for the first 60 months following Commission approval of Amendment No. 5, any change to the Penny Program would require unanimous approval by the Plan Sponsors. For the period following the expiration of that initial 60-month period, any changes to the Penny Program would require a super-majority (2/3) vote of the Plan Sponsors. The Plan Sponsors structured the amendment process this way because they believe delaying the elimination of the unanimity requirement by 60 months would preserve the agreed upon provisions of the Penny Program, except in circumstances where all the Plan Sponsors agree a change is needed.

III. Discussion and Commission Findings

The Commission finds that Amendment No. 5 is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, and as discussed in greater detail below, the Commission finds that Amendment No. 5 is consistent with Section 11A of the Act²² and Rule 608 thereunder²³ in that it is 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, the national market system to allow the Exchanges to continue to quote certain options classes in penny increments on a permanent basis pursuant to provisions established by Amendment No. 5.

In support of the proposal to establish the Penny Program, the Exchanges prepared a report that contained the results of their analysis of the Penny Pilot and its impact on several indicia of market quality ("Report").²⁴ The

²¹ See Section 7 of the Plan.

²² 15 U.S.C. 78k–1.

²³ 17 CFR 242.608.

²⁴ See Report on Activity in Options Classes Added to the Penny Pilot dated March 8, 2019 ("Report"), submitted as Exhibit A as part of Amendment No. 5. See also Notice, *supra* note 4, at 68966–83.

Report contains data and analysis on the impact of the Penny Pilot on spread width, liquidity, and quote message traffic and shows that spreads in options classes with a premium of less than \$3.00 decreased upon inclusion in the Penny Pilot.²⁵ In addition, the Report shows that volume increased in Penny Pilot classes²⁶ and that while liquidity at the National Best Bid or Offer decreased, the size available was nonetheless greater than the size traded.²⁷ Further, the Exchanges represent that they and the Options Price Reporting Authority (“OPRA”) have demonstrated sufficient capacity to handle the increase in quotes resulting from quoting in penny increments during the Penny Pilot. The Exchanges also represent that the OPRA system and their own respective systems have sufficient quote capacity to accommodate the projected increase in quote message traffic that is likely to result from the Penny Program.²⁸

In addition to reviewing the data and analysis provided by the Exchanges in their Report, the Commission reviewed an independent analysis of the impact of the Penny Pilot on market quality conducted by Cornerstone Research (“Cornerstone”).²⁹ Cornerstone’s analysis used quoted and effective spreads as measures of market quality and concluded that the most liquid options classes included in the Penny Pilot experienced a significant decrease in effective and quoted spread. For less liquid options classes, however, the results did not suggest that allowing quoting in penny increments has a significant effect on market quality. The Exchanges state that the results of their analysis were consistent with Cornerstone’s findings that inclusion in the Penny Pilot is associated with a decrease in quoted spreads.³⁰

The Commission believes that the evidence contained in both the Exchanges’ Report and the Cornerstone analysis demonstrates that the Penny Pilot has benefitted investors and other market participants in the form of narrower spreads while also having a minimal negative impact on the industry. The Commission believes that

²⁵ Specifically, the Report states, “[t]he study found that the average spread width for issues in the Study Group was reduced during the Pilot period as compared to pre-Pilot period.” See Notice, *supra* note 4, at 68967.

²⁶ See *id.* at 68976–77.

²⁷ See *id.* at 68967.

²⁸ See *id.* at 68965–66.

²⁹ See DERA Memorandum on Cornerstone Analysis, dated December 18, 2017 and July 3, 2017 Cornerstone Analysis, available at: https://www.sec.gov/files/DERA_Memo_on_a_Cornerstone_Penny_Pilot_Analysis.pdf.

³⁰ See Notice, *supra* note 4, at 68967.

investors will benefit from the implementation of a permanent approach to allowing continued quoting in penny increments for certain options classes. The Penny Program is designed to facilitate a permanent environment where investors can continue to enjoy reduced spreads, and concomitantly potentially reduced costs, in portions of the options market where the greatest amount of options trading occurs (*i.e.*, the top 300 options classes). Further, although the Exchanges predict that the Penny Program will generate a significant increase in quote message traffic,³¹ the Plan Sponsors have represented that the Exchange’s respective systems and OPRA’s system will maintain sufficient capacity to manage the increase in message traffic.

The Penny Program annual review process will help facilitate the maintenance of a fair and orderly market for trading options because it provides a framework, based upon objective criteria, that rebalances the composition of the Penny Program on an annual basis, thereby helping to ensure that the most actively traded options classes are included in the Penny Program. Further, the parameters of the annual review process are designed to prevent high turnover for options classes in the Penny Program by incorporating a buffer to help ensure that options classes that are actively traded are not prematurely removed from the Penny Program.

The Penny Program will also allow options classes to be added outside the annual review process provided certain objective criteria (trading volume thresholds and initial price tests) are satisfied. These procedures should facilitate the maintenance of a fair and orderly market by permitting options classes that reflect a certain level of trading interest (either because the class is newly listed or a class that experience a significant growth in investor interest) to quote in finer trading increments, which in turn should benefit market participants by reducing the cost of trading such options.

In addition, the process to address options classes in the Penny Program that undergo a corporate action will help to ensure continued liquidity in such options classes to the benefit of market participants and investors thereby helping to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest by providing clarity and uniformity

³¹ See *id.* at 68975–83.

among the Exchanges as to how such options classes will be treated.

Further, requiring that any series in an option class in the Penny Program in which the underlying security has been delisted, or are identified by OCC as ineligible for opening customer transactions, continue to quote pursuant to the rules of the Penny Program until all such options have expired, will promote the maintenance of fair and orderly markets by encouraging market participants to continue to provide liquidity in such options classes on a predictable and transparent time frame.

The Exchanges’ proposal to permit amendments to be approved by a super-majority vote of the Exchanges, rather than by a unanimous vote, as the Plan otherwise requires, should promote the maintenance of fair and orderly markets and remove impediments by preventing a single Exchange from having an effective veto over modifications to the Penny Program that a super-majority of Exchanges support, thus potentially obstructing improvements to the Program and its operations. The Commission notes that the Exchanges’ proposal to delay the elimination of the unanimity requirement by 60 months is designed to preserve the agreed upon provisions contained in Amendment No. 5, except in circumstances where all the Exchanges agree a change is needed, which in turn should allow the Penny Program to operate as proposed before lesser supported changes are proposed.

The Commission notes that no comments were received in opposition to continuing to allow the Exchanges to quote in penny increments or with respect to the specific provisions regarding how the Penny Program will operate.

For the reasons discussed above, the Commission finds that Amendment No. 5 is consistent with Section 11A of the Act³² and Rule 608 thereunder.³³

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,³⁴ and Rule 608 thereunder,³⁵ that Amendment No. 5 to the Plan (File No. 4–443) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

J. Matthew DeLesDernier,
Assistant Secretary

[FR Doc. 2020–07224 Filed 4–6–20; 8:45 am]

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³² 15 U.S.C. 78k–1.

³³ 17 CFR 242.608.

³⁴ 15 U.S.C. 78k–1.

³⁵ 17 CFR 242.608.

³⁶ 17 CFR 200.30–3(a)(29).