



February 26, 2024

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

**Re: Joint Industry Plan; Notice of Filing of a National Market System Plan
Regarding Consolidated Equity Market Data (File No. 4-757)**

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ respectfully submits this letter to the U.S. Securities and Exchange Commission (“Commission” or “SEC”) to comment on the proposal filed by the national securities exchanges and FINRA (each a “Participant” or “self-regulatory organization” (“SRO”) and, collectively, the “Participants” or the “SROs”) to establish under Section 11A of the Securities Exchange Act of 1934 (“Exchange Act”) a new single national market system plan governing the public dissemination of real-time consolidated equity market data for national market system (“NMS”) stocks (the proposed “CT Plan”).² The proposed CT Plan follows the Commission’s September 1, 2023 order (“Amended Order”) and May 6, 2020 governance order (“Governance Order”) directing the SROs to consolidate the three current market data plans (i.e., the CTA Plan, CQ Plan and UTP Plan) into a single plan to govern the distribution of equity market data.³ SIFMA broadly supports the Commission’s approval of the proposed CT Plan, subject to certain recommendations below designed to enhance its effectiveness.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See Release No. 34-99403 (January 19, 2024), 89 FR 5002 (January 25, 2024). Capitalized terms not otherwise defined in this letter have the same meaning as they do in the proposed CT Plan.

³ See Release No. 34-98271 (Sept. 1, 2023), 88 FR 61630 (Sept. 7, 2023) (“Amended Order”); Release No. 34-88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) (“Governance Order”).

I. Background

The proposed CT Plan is the second version of the plan filed by the SROs to consolidate the three current equity market data plans into a single plan. The first version of the plan was approved by the Commission in August 2021 (“CT Plan Approval Order”).⁴ After that approval, the NYSE, Nasdaq and Cboe exchange groups filed a petition with the D.C Circuit to challenge certain aspects of the Commission’s Governance Order and CT Plan Approval Order. On July 5, 2022, the D.C. Circuit granted the exchanges’ petition with respect to the inclusion of non-SRO voting members on the CT Plan’s operating committee, but denied the petition with respect to the other challenged aspects of the Governance Order and the CT Plan Approval Order, upholding the Commission’s actions with respect to requiring voting by SRO group and requiring an independent administrator.⁵ With regard to voting by SRO group, the Commission had determined in the Governance Order that each exchange group or unaffiliated SRO having more than 15% market share over a specified period of time would be allocated two votes on the CT Plan operating committee, with the other exchange groups and unaffiliated SROs each being allocated one vote. Consistent with the D.C. Circuit’s decision, the Commission’s Amended Order modified its earlier Governance Order based on the court’s findings in that decision and otherwise directed the SROs again to replace the three current equity market data plans with a single plan.

II. Discussion

SIFMA broadly supports the Commission’s approval of the proposed CT Plan, subject to certain recommendations that we believe will enhance the effectiveness of the plan. SIFMA has long supported the Commission’s efforts to modernize the distribution of equity market data that is reflected in the CT Plan. The adoption and implementation of a single equity market data plan is long overdue. We applaud the Commission efforts in issuing the Amended Order to get this critical initiative back on track. Our recommendations are discussed below.

A. CT Plan Implementation Timeline

Under the Commission’s Amended Order, the SROs were required to include a timeline that sets forth the tasks and timing for the SROs to fully implement the CT Plan. SIFMA notes that under the SROs’ proposed timeline included in the proposed CT Plan, full implementation of the plan would not occur for at least 29 months, or almost two and half years from Commission approval of the proposed CT Plan. Although we appreciate the complexities involved in such an undertaking, including the hiring of a new plan Administrator, we believe that more thought should be given to ways in which implementation can be accelerated.

⁴ See Release No. 34-92586 (Aug. 6, 2021), 86 FR 44142 (Aug. 11, 2021) (“CT Plan Approval Order”).

⁵ See *The Nasdaq Stock Market LLC, et al. v. Securities and Exchange Commission*, 38 F.4th 1126, 1131 (D.C. Cir. 2022).

One possible suggestion is to incorporate an understanding of SLA terms as part of the Administrator selection process. In building in the SLA terms as part of the selection process, we believe that the contract negotiations with the new Administrator can be reduced from 4 months to 2 months.

Under the Amended Order, the SROs also are required to provide written reports to the Commission and the public regarding their progress to implement the CT Plan every three months. Although the SROs included this requirement in the proposed CT Plan in Section 14.2, it is not clear whether the progress reports are required to be provided to the public at the same time as the reports are provided to the Commission. It is critical that the reports also be made publicly available in a timely manner so that the public is fully informed of the progress and can weigh in if it seems that the implementation is experiencing unnecessary delays. Accordingly, we recommend that the proposed CT Plan be clarified to provide that the progress reports are provided to the public at the same time they are provided to the Commission.

B. MDI Rule Fees and Implementation

Critically, under the proposed timeline, the SROs also are giving themselves upwards of almost two years to establish and adopt fees for equity market data to be disseminated under the proposed CT Plan. It is not clear under the proposed CT Plan whether the fees would be for the equity market data currently distributed under the three equity market data plans, or whether the fees would cover the new and enhanced core equity market data to be distributed under the Commission's Market Data Infrastructure ("MDI") Rules.⁶ We note that it has been over three years since the MDI Rules were adopted, well beyond a reasonable period of time for SROs to implement the rules. While the SROs did propose fees for such market data, the proposal that was submitted did not have broad consensus among the various SRO groups, and ultimately, the Commission was forced to disapprove it.⁷ Accordingly, we also recommend that the Commission include in any order approving the proposed CT Plan its expectations and timing for the SROs to propose and adopt fees for the enhanced core equity market data to be distributed under the MDI Rules.⁸

Similarly, we also urge the Commission to order the SROs to set forth a credible timeline to implement the MDI Rules. The SROs so far have thwarted implementation of the rules by failing to put forth a credible fee proposal for the new core data to be distributed under the rules.

⁶ See Release No. 34-90610 (December 9, 2020), 86 FR 18596 (April 9, 2021); Release No. 34-90610A (May 24, 2021), 86 FR 29195 (June 1, 2021) (technical correction to MDI Rules Release).

⁷ See Release No. 34-95849 (September 21, 2022), 87 FR 58592 (September 27, 2022).

⁸ In the SEC's proposal titled "Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders," the SEC sought to accelerate the implementation of the round lot and odd-lot information definitions in the MDI Rules and to amend the odd-lot information definition adopted under the MDI Rules to require the identification of the best odd-lot order. See Release No. 34-96494 (December 14, 2022), 87 FR 80266 (December 29, 2022) ("Minimum Pricing Increments Proposal"). If the SEC advances the Minimum Pricing Increments Proposal, the SEC might also address the MDI Rules fee amendment in any adopting release for the Minimum Pricing Increments Proposal.

With the new voting structure for the operating committee under the proposed CT Plan,⁹ we expect the SROs to expeditiously put forth such a proposal and for the Commission to hold them to account. We similarly expect the Commission to order the SROs to establish and put forth a credible plan for the implementation of the MDI Rules. Failing to do so not only disadvantages investors of the new core data, but also ignores a duly-adopted Commission rulemaking that was approved by a 5-0 vote.

C. Securities Information Processor Outages

Under the proposed CT Plan, the SROs are proposing to continue to use the two current processors - the CQ Plan and CTA Plan's processor and the UTP Plan's processor - to provide the same services to the CT Plan that they are currently providing under the CQ Plan, CTA Plan, and UTP Plan.¹⁰ In Section 7.1 of the proposed CT Plan, the SROs have set forth a process for initiating a regulatory halt if a processor is unavailable, listing a waterfall of backup options that would be followed in such a scenario. In particular, this section provides that “[i]f a Processor is unable to disseminate notice of a Regulatory Halt or the Primary Listing Market is not open for trading, the Primary Listing Market will take reasonable steps to provide notice of a Regulatory Halt, which shall include both the type and start time of the Regulatory Halt, by dissemination through: (A) PDP; (B) posting on a publicly-available Member website; (C) system status messages; or (D) a notification via an alternate Processor, if available.”

We are of the view that the current two processors should serve as backups for each other in the same manner that the NYSE and Nasdaq serve as backups for each other for Trade Reporting Facility and closing auctions purposes. In our view, the only acceptable backup would be an automated regulatory halt message notification by an alternative Processor; therefore alternatives (A)-(C) should be deleted. Including them in the CT Plan incorrectly suggests that they are viable alternatives. Moreover, if the CT Plan ever sought to move to single processor in the future prior to implementation of the competing consolidator model under the MDI Rules, we believe that any such move also would need to address the fact that such a processor would be a

⁹ We note that on January 24, 2024, the Cboe exchange group submitted a comment letter on the proposed CT Plan that again seeks to challenge the Commission's efforts to update and reform the three current equity market data plans as reflected in the proposed CT Plan. See (<https://www.sec.gov/comments/4-757/4757-417779-985642.pdf>). Cboe asserts in its comment letter that the Commission's decision to allocate two votes on the CT Plan operating committee to only those exchange groups that have more than 15% market share over a specified period is arbitrary and capricious because Cboe is being treated differently than the NYSE and Nasdaq exchange groups. We believe that the D.C. Circuit has already found that the Commission had the authority to allocate the SRO votes in the manner that it did in the Governance Order.

¹⁰ We think that this is reasonable, because the exclusive role of the current two processors should be time limited under the Commission's MDI Rules.

single point of failure for the distribution of equity market data and that some sort of backup mechanism would need to be established.

D. CT Plan Administrator

Consistent with the Commission's Governance Order and Amended Order, the CT Plan establishes a detailed process to select a new independent Administrator. An Administrator would be defined as being independent under the plan if it is not owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own proprietary market data product for NMS stocks. While SIFMA continues to fully support the use of independent Administrator for the CT Plan, we are concerned that this definition of independence may be too narrow. In particular, we are concerned about a scenario in which one or more exchange groups could seek to establish a new "independent" administrator by spinning off/selling to a new corporate entity the administrator functions, even though all of the employees of such a new entity would remain the same or nearly the same after the spin-off/sale. Such a scenario could call into question the independence of the new Administrator.

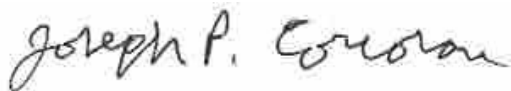
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SIFMA appreciates the opportunity to submit this letter to the Commission regarding the proposed CT Plan. As discussed above, SIFMA broadly supports the Commission's approval of the proposed CT Plan, subject to certain recommendations that are designed to enhance its effectiveness. If you have any questions or need any additional information, please contact Ellen Greene at (212) 313-1287 or Joe Corcoran at (202) 962-7383.

Sincerely,



Ellen Greene
Managing Director
Equities & Options Market Structure



Joseph Corcoran
Managing Director, Associate General Counsel
SIFMA

Cc: Mr. Haoxiang Zhu, Director, Division of Trading and Markets

Mr. David Saltiel, Deputy Director, Division of Trading and Markets
Mr. David Shillman, Associate Director, Division of Trading and Markets