

February 26, 2024

Ms. Vanessa Countryman
Secretary
US Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

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 Investment Company Institute (ICI) is writing to express its support for the revised CT Plan.¹ Consistent with our past comments,² ICI members have a strong interest in the governance of consolidated equity data under the CT Plan both as contributors to, and consumers of, market data. Although the revised plan does not provide non-SROs with voting representation on the Operating Committee, we continue to support the other important provisions mandated under the SEC's amended order that address the exchanges' conflicts of interest in overseeing NMS equity data.³ Addressing these conflicts, in turn, could help to improve the content and delivery of the consolidated feed. Therefore, these provisions are consistent with Section 11A of the Exchange Act and will help to ensure the availability "of information with respect to quotations for and transactions in securities," that is "in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets."⁴ These provisions notably include:

¹ Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 34-99403 (Jan. 19, 2024), 89 Fed. Reg. 5002 (Jan. 25, 2024) ("Revised CT Plan"), available at <https://www.govinfo.gov/content/pkg/FR-2024-01-25/pdf/2024-01369.pdf>.

² See, e.g., Letter from Dorothy Donohue, Deputy General Counsel, ICI to Vanessa A. Countryman, Secretary, SEC (Nov. 12, 2020) ("ICI Original CT Plan Letter"), available at https://www.ici.org/system/files/attachments/20_ltr_nmsplan.pdf (expressing support for the original CT Plan).

³ In July 2022, the US Court of Appeals for the DC Circuit invalidated the requirement from the original CT Plan and the Commission's May 2020 NMS governance order that required non-SRO voting representation on the plan's Operating Committee. *The Nasdaq Stock Market LLC, et al v. SEC*, No. 21-1167 (D.C. Cir. July 5, 2022) ("DC Circuit Opinion"). Based on the court's ruling, the Commission issued an amended order directing the SROs to submit a new plan based in part on the provisions of the May 2020 order upheld by the court, along with other provisions adopted as part of the original CT plan. Amended Order Directing the Exchanges and the Financial Industry Regulatory Authority, Inc., To File a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 34-98271 (Sept. 1, 2023) 88 Fed. Reg. 61630 (Sept. 7, 2023) ("SEC Amended Governance Order"), available at <https://www.govinfo.gov/content/pkg/FR-2023-09-07/pdf/2023-19311.pdf>.

⁴ Securities Exchange Act Section 11A(a)(1)(C), 15 U.S.C. 78k-1(a)(1)(C).

(1) limiting exchange groups to one vote on the Operating Committee (with the ability to obtain a second vote based on a consolidated equity market share of greater than 15%); and (2) appointing an independent administrator that does not sell competing proprietary data products to oversee the plan.⁵ We further support other provisions that the SEC mandated in the amended order and that have been incorporated into the revised CT Plan.⁶ Below, we provide some additional perspective and recommendations on other aspects of the proposal.

The Commission Should Ensure that the Revised CT Plan Enables the Advisory Committee to Have Sufficient Transparency

In addition to the provisions identified above, we support maintaining an Advisory Committee under the revised CT Plan with a specific composition requirement that includes an institutional investor representative,⁷ and the right to attend Operating Committee and subcommittee meetings.⁸ The composition of the Advisory Committee, which consists of the same market participant categories that would have been designated as non-SRO voting representatives, is essential to enabling funds and other non-SRO market participants to continue to have transparency into plan governance as well as the right to submit their views on plan matters to inform the decision-making of the Operating Committee.⁹

However, we recommend that the Commission take steps to ensure that the Advisory Committee and its members are not unreasonably limited in their ability to attend Operating Committee and subcommittee meetings, which would limit their visibility into plan matters and ability to provide input. For example, provisions that limit the Advisory Committee's transparency into plan matters, such as those permitting the Operating Committee to invoke an Executive Session or to

⁵ Revised CT Plan at Section 4.3 (Action of Operating Committee); Section 6.2 (Independence of the Administrator). We note that the DC Circuit found these plan features to be "permissible." DC Circuit Opinion at 31.

⁶ These provisions include, for example: (1) applying conflicts-of-interest policies to any SRO-designated person, including a member observer, that attends operating committee and subcommittee meetings, *id.* at Section 4.11 (Disclosure of Potential Conflicts of Interest); (2) clarifying that the prohibition on an SRO appointing a representative that is involved with "licensing" of proprietary data products for conflicts of interest-related reasons includes all functions related to monitoring or ensuring a subscriber's compliance with the terms of the license contained in its data subscription agreement and all functions relating to the auditing of subscriber data usage and payment, *id.* at Section 4.11(b)(i) (Recusal); and (3) requiring all subcommittees to prepare minutes of all meetings, which must be made available to all members of the Operating Committee and the Advisory Committee and precluding subcommittees from carrying out administrative functions to be carried out by the independent administrator, *id.* at 4.7(b) (Advisory Committee).

⁷ *Id.* at Section 4.7(b) (Advisory Committee, Composition).

⁸ *Id.* at Section 4.4(a) (Meetings of the Operating Committee); Section 4.8(c) (Subcommittees).

⁹ *Id.* at Section 4.7(c) (Advisory Committee, Function). We note that the existing plans feature advisory committees that may attend Operating Committee meetings and weigh in on plan matters that "include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to [a plan]." *See, e.g.*, CTA Advisory Committee Policy (Feb. 27, 2020), available at https://www.ctaplan.com/publicdocs/ctaplan/CTA_Advisory_Committee_Policy.pdf.

refer matters to a legal subcommittee, should be tailored in nature.¹⁰ We also urge the Commission to reincorporate into the revised CT Plan some of the modifications that the SEC made to the original CT Plan that were intended to promote the role of non-SROs.¹¹

The Commission Should Ensure Timely Implementation of the Revised CT Plan

We support timely implementation of the revised CT Plan and, therefore, appreciate that the Commission has mandated that the SROs provide an implementation schedule, which they have included in this proposal. The SROs have identified six related implementation workstreams, the steps involved with each workstream, and the associated timelines for completing those steps within a 30-month period. Further, the SROs have said that they will work “expeditiously” to complete this work, based on the significant number of steps involved and their sequential and interrelated nature. Nevertheless, we urge the Commission to monitor the Operating Committee’s progress closely, including carefully reviewing the public written progress reports that must be submitted to the SEC every three months.¹² As part of its review of these progress reports or other facets of these implementation workstreams, we reiterate our prior recommendation that the Commission consider measures to address any unwarranted delays.¹³

¹⁰ *Id.* at Section 4.4(g) (Meetings of the Operating Committee); Section 4.8(d) (Subcommittees).

¹¹ For example, the Commission previously modified the language of the original CT Plan seemingly to limit the scope of potential items that could be discussed in an Executive Session from “should be limited to” to “shall be limited to.” Joint Industry Plan; Order Approving as Modified, a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 34-92586 (Aug. 6, 2021), 86 Fed. Reg. at 44142, 44170 n.416 (“2021 CT Plan Approval Order”). The revised CT Plan reverts to the language of the original proposal. Revised CT Plan at Section 4.4(g)(i). Additionally, the Commission also modified the language of the original plan to preclude discussions regarding contract negotiations with the plan processors or the plan administrator in an Executive Session. 2021 CT Plan Approval Order at 44170-71. *See also* Proposal at Section 4.8(d) (limiting the scope of the information required to justify referring a matter to a legal subcommittee from the scope previously approved under the original CT Plan). While we recognize that these modifications were meant to ensure that non-SROs, as voting representatives, would not be excluded in deliberations on important plan matters, we believe that similar policy rationales for narrowly tailoring the use of Executive Sessions or other exclusive meeting forums apply where non-SROs are Advisory Committee members.

¹² We have observed that Section 14.2 of the revised CT Plan may be interpreted as only requiring the posting of the written progress reports to the existing plans’ websites and the revised plan’s website after a new administrator is selected for the revised plan, which is not estimated to occur until 14 months after implementation begins. We recommend an amendment clarifying that the posting of the reports on the existing plans’ websites occur prior to that selection, which would avoid unnecessary delay and be consistent with the requirement that the Operating Committee of the revised CT Plan submit reports to the Commission three months after its formation.

¹³ *See* ICI Original CT Plan Letter at 7 (recommending that the Commission “financial incent [the SROs] to timely operationalize the [original CT Plan] (through fines or not allowing the SROs to collect SIP fees for some time period.)” We support consideration of additional measures in part because the proposed plan allows for the Operating Committee to lengthen the implementation timelines by an affirmative two-thirds vote of the Operating Committee. Revised CT Plan at Section 4.3(b).

The Commission Must Ensure Prompt Implementation of the Market Data Infrastructure Rule

In addition to approving the revised CT Plan, we strongly urge the Commission to pursue further steps as necessary to implement the Market Data Infrastructure (MDI) rule, which the Commission unanimously adopted in December 2020¹⁴ and the US Court of Appeals for the DC Circuit upheld in May 2022.¹⁵ Specifically, the Commission should require the SROs to re-file revised plan amendments setting the fees for the expanded core data elements and addressing other non-fee aspects prescribed in the MDI rule. Since the Commission disapproved the initial proposals in September 2022,¹⁶ market participants remain uncertain as to when the existing SIP operating committees will submit revised proposals for the Commission’s approval. Given that the filing and approval of these amendments is the first step to implementing other important provisions such as the introduction of new core data elements and the registration of competing consolidators,¹⁷ it is critical that the MDI rule be implemented expeditiously.

ICI continues to strongly support the MDI rule, which represents a critical step to reforming the existing framework for consolidated equity market data. While the revised CT Plan will help to mitigate the conflicts of interest inherent in the existing NMS equity data governance model, the MDI rule would advance that goal even further by enhancing the content and delivery of the data, as well as potentially lowering equity market data costs through greater competition. Among its reforms, the rule would eliminate the role of an exclusive plan processor in favor of a decentralized model that allows competing consolidators to collect, consolidate, and disseminate consolidated market data. Given that the CT Plan’s Operating Committee, consisting only of SRO voting representatives, would continue to rely on plan processors,¹⁸ implementing the MDI

¹⁴ *Market Data Infrastructure*, Exchange Act Release No. 34-90610 (Dec. 9, 2020), 86 Fed. Reg. 18596 (Apr. 9, 2021) (“MDI Final Rule”).

¹⁵ *The Nasdaq Stock Market LLC, et al v. SEC*, No. 21-1100 (D.C. Cir. May 24, 2022).

¹⁶ *See, e.g.*, Consolidated Tape Association; Order Disapproving the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan, Exchange Act Release No. 34-95851 (Sept. 21, 2022), 87 Fed. Reg. 58613 (Sept. 27, 2022); Consolidated Tape Association; Order Disapproving the Thirty-Seventh Substantive Amendment to the Second Restatement of the CTA Plan and the Twenty-Eighth Substantive Amendment to the Restated CQ Plan, Exchange Act Release No. 34-95850 (Sept. 21, 2022), 87 Fed. Reg. 58560 (Sept 27, 2022) (“SEC Disapproval Over”). To our knowledge, the operating committees of the existing plans have not submitted revised plan amendments to the Commission for approval.

¹⁷ We note that the Commission has proposed to accelerate the inclusion of new round lot sizes and odd lot quote information into core data—which was adopted under the MDI Rule—as part of proposed amendments to Regulation NMS. *See Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders*, Exchange Act Release No. 34-96494 (Dec. 14, 2022), 87 Fed. Reg. 80266 (Dec. 29, 2022).

¹⁸ The SROs have specified that the revised CT Plan will continue to utilize the existing SIP processors to consolidate and disseminate equity market data, and the revised plan itself contemplates a process for selecting new processors. *See Revised CT Plan at Section 5.3 (Process for Selecting New Processors)*; *see also SEC Amended Governance Order at 61640 (specifying that the role of the Operating Committee will be to select and oversee plan processors)*. Under the MDI rule, however, the Commission amended Rule 603 of Regulation NMS to eliminate the

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rule has become even more critical to “assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information” pursuant to Section 11A of the Exchange Act.¹⁹

* * *

We appreciate the opportunity to comment and look forward to the continued implementation of the NMS equity data governance reforms. If you have any questions, please contact me at sarah.bessin@ici.org or Nhan Nguyen at nhan.nguyen@ici.org.

Regards,

/s/ Sarah Bessin

Sarah A. Bessin
Deputy General Counsel, Securities Regulation

/s/ Nhan Nguyen

Nhan Nguyen
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required dissemination of consolidated equity market data through a single, exclusive plan processor in favor of a decentralized consolidation model, *i.e.*, competing consolidators and self-aggregators. *See* amended SEC Rule 603(b).

¹⁹ Securities Exchange Act Section 11A(c)(1)(B), 15 U.S.C. 78k-1(c)(1)(B). We further note that the Commission subsequently disapproved the SROs’ proposed non-fee plan amendments based on their failure to reflect the decentralized model. *See, e.g.*, SEC Disapproval Order at 58567. Accordingly, we emphasize that the revised CT Plan’s reference to, and initial reliance on, plan processors should not obviate the need for the SROs to re-file the relevant plan amendments required under the MDI Rule that allow competing consolidators and self-aggregators to obtain the data necessary to generate consolidated market data.

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cc: The Honorable Gary Gensler
The Honorable Hester M. Peirce
The Honorable Caroline Crenshaw
The Honorable Mark Uyeda
The Honorable Jaime Lizárraga

Haoxiang Xu, Director, Division of Trading and Markets

Securities and Exchange Commission