February 20, 2020

Via Electronic Mail
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Rel. No. 34-87906, File No. 4-757;[1]
Rel. No. 34-87907; File No. SR-CTA/CQ-2019-01;[2]
Rel. No. 34-87908; File No. S7-24-89;[3]
Rel. No. 34-87909; File No. SR-CTA/CQ-2019-04;[4]
Rel. No. 34-87910; File No. S7-24-89;[5]

Dear Ms. Countryman:

The Healthy Markets Association[6] appreciates the opportunity to offer comments on the above-referenced proposals to address the governance and provision of market data. In general, these proposals include: (1) a proposed order that would direct the self-regulatory organizations to develop a New Consolidated Data Plan;[7] (2) proposals

[1] *Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data*, Sec. and Exch. Comm'n, Exch. Act Rel. No. 34-87906, Jan. 8, 2020, *available at* https://www.sec.gov/rules/sro/nms/2020/34-87906.pdf ("Proposed Order").

[2] *Notice of Filing of the Thirtieth Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Second Substantive Amendment to the Restated CQ Plan*, Sec. and Exch. Comm'n, Exch. Act Rel. No. 34-87907, Jan. 8, 2020, *available at* https://www.sec.gov/rules/sro/nms/2020/34-87907.pdf.

[3] *Notice of Filing of the Forty-Fourth Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis*, Sec. and Exch. Comm'n, Exch. Act Rel. No. 34-87908, Jan. 8, 2020, *available at* https://www.sec.gov/rules/sro/nms/2020/34-87908.pdf.

[4] *Notice of Filing of the Thirty-Third Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Fourth Substantive Amendment to the Restated CQ Plan*, Sec. and Exch. Comm'n, Exch. Act Rel. No. 34-97909, Jan. 8, 2020, *available at* https://www.sec.gov/rules/sro/nms/2020/34-87909.pdf.

[5] *Notice of Filing of the Forty-Seventh Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis*, Sec. and Exch. Comm'n, Exch. Act Rel. No. 34-87910, Jan. 8, 2020, *available at* https://www.sec.gov/rules/sro/nms/2020/34-87910.pdf.

[6] The Healthy Markets Association is an investor-focused not-for-profit coalition working to educate market participants and promote data-driven reforms to market structure challenges. Our members, who range from a few billion to hundreds of billions of dollars in assets under management, have come together behind one basic principle: Informed investors and policymakers are essential for healthy capital markets. To learn more about Healthy Markets or our members, please see our website at http://healthymarkets.org.

[7] Proposed Order.

by the Consolidated Tape/Consolidated Quotation ("CTA/CQ") and Unlisted Trading Privileges ("UTP") Plans to require enhanced conflicts of interest disclosures;[8] and (3) proposals by the CTA/CQ and UTP Plans to adopt confidentiality rules.[9] All three sets of the proposals were released by the Commission on the same day. Notably, however, since their release, the Commission has released a proposed rule that would, amongst other reforms, define "core data" to include expanded data elements and open up the SIPs to competition ("Market Infrastructure Proposal").[10]

Below, we outline why reforms to the provision of market data are necessary and then examine each of the Proposed Order, Conflicts of Interest Proposal, and the Confidentiality Proposal.[11] Unfortunately, as described in more detail below, these three proposals individually or collectively are insufficient to meaningfully address the deeply rooted inadequacies and conflicts of interest inherent in the current market data regulatory regime. Accordingly, we urge the Commission to significantly revise the Proposed Order, the Conflicts of Interest Proposal, and the Confidentiality Proposal.

Why is Commission Action Necessary to Modernize Public Market Data?

To best explain why the Commission's actions are necessary, below, we will (1) outline what the Securities Information Processors "SIPs" are and why the exist, (2) explore what the SIPs are used for today, and (3) examine why the SIPs are consistently inadequate for modern trading purposes.

What are the SIPs?

While many experts believe that the SIPs were created by the 1975 Act Amendments, they weren't. In reality, the Commission began the process of creating the SIPs several years earlier. By early 1972, the Commission knew that US markets needed a

[8] Exchange Act Release Nos. 34-87907 and 34-87908 (collectively, "Conflicts of Interest Proposal").
[9] Exchange Act Release Nos. 34-87909 and 34-87910 (collectively, "Confidential Proposal").
[10] Proposed Order; *Market Data Infrastructure*, Sec. and Exch. Comm'n, Exch. Act Rel. No. 34-88216, Feb. 14, 2020, available at https://www.sec.gov/rules/proposed/2020/34-88216.pdf.
[11] In our comments to the Market Access and Market Data Roundtables, we urged the Commission to "take bold action to address the deeply-rooted structural problems with market data, including its content, how it is collected, how it is paid for, how it is distributed, and how it is overseen." Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, Sec. and Exch. Comm'n, Oct. 23, 2018, *available at* https://www.sec.gov/comments/4-729/4729-4554022-176182.pdf (citing U.S. Dep't of the Treasury, *A Financial System That Creates Economic Opportunities: Capital Markets*, 64, Oct. 2017, *available at* https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf and Healthy Markets Association, *US Equity Market Data – How Conflicts of Interest Overwhelm an outdated Regulatory Model & Market Participants*, Nov. 2017, at 6, *available at* https://www.healthymarkets.org/new-products/market-data-how-conflicts-overwhelm-an-outdated-regulatory-model). We anticipate commenting separately on the Market Infrastructure Proposal.

consolidated system for the provision of essential market data.[12] As then-SEC Chairman William J. Casey explained at the time, a public market data stream would "for the first time give us truly nationwide disclosure of prices and volume in listed stocks, and provide the basis for a truly national market in which investors will know where they can get the best price."[13]

On March 2, 1973, the New York, American, Midwest, Pacific and PBW Stock Exchanges and the National Association of Securities Dealers, Inc. filed with the Commission a "consolidated tape plan."[14] The Commission responded with numerous recommended adjustments, including revisions to ensure that the plan would have proper governance and provide transparency to public amendments.[15] A revised plan was submitted to the Commission on April 17, 1974.[16]

On May 17, 1974, the SEC declared the revised CTA Plan effective.[17] Shortly thereafter, Congress adopted the 1975 Amendments to the Securities Exchange Act of 1934 to enshrine into the law the "national market system" contemplated by the SEC interpretive release from a few years earlier.[18] The CQ Plan was established in 1980.[19]

With the 1975 Amendments, Congress declared that consolidating market data "would form the heart of the national market system."[20] The Commission was explicitly authorized to ensure "prompt, accurate, reliable, and fair collection, processing,

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[12] Interpretive Releases Related to the Securities Exchange Act of 1934 and General Rules and Regulations Thereunder, Sec. and Exch. Comm'n, 37 Fed. Reg. 5286, at 5287, (Mar. 14, 1972) ("Implementation of a nationwide disclosure or market information system to make universally available price and volume in all markets and quotations from all market makers."); see also, *Id.*, at 5287 ("Technological means must be found to bring together promptly transactional information from all markets and, if feasible, to present it on a single tape."); see also *Id.*, at 5287 ("In addition to developing a composite transactional tape, steps must be taken to Implement a composite quotation system. The technology and hardware for such a system are said to be available, and any remaining regulatory problems should be promptly worked out so that the system can attain Its objective of providing quotations which are truly comparable, notwithstanding the different assumptions on which they may be based.").

[13] Remarks of William J. Casey, Chairman, Sec. and Exch. Comm'n, before the Economic Club of New York, Mar. 8, 1972 (summarized at SEC News Digest, 72-45 (Mar. 9, 1972), *available at* https://www.sec.gov/news/digest/1972/dig030972.pdf). A copy of the remarks as prepared for delivery are *available at* https://www.sec.gov/news/speech/1972/030872casey.pdf.

[14] *New York, American, Midwest, PBW, and Pacific Coast Stock Exchanges and NASD: Notice of Receipt of Plan*, Sec. and Exch. Comm'n, 38 Fed. Reg. 6443, *available at* https://cdn.loc.gov/service/ll/fedreg/fr038/fr038046/fr038046.pdf.

[15] See *Notice of Commission Comments on Consolidated Tape Plan Filed Pursuant to Rule 17a-15 Under the Securities Exchange Act of 1934*, Sec. and Exch. Comm'n, Rel. No. 10218, June 13, 1973.

[16] See Letter from Michael Tobb, Midwest Stock Exchange to George Fitzsimmons, SEC, Apr. 17, 1974 (attaching *Plan Submitted Pursuant to Rule 17a-15 of the Securities and Exchange Commission Under Securities Exchange Act of 1934*, April 17, 1974).

[17] 39 Fed. Reg. 17799.

[18] Pub. L. No. 94-29, 89 Stat. 97 (1975), *available at* https://www.gpo.gov/fdsys/pkg/STATUTE-89/pdf/STATUTE-89-Pg97.pdf.

[19] 45 Fed. Reg. 6521.

[20] H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 93 (1975).

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,"[21] which the Commission has declared is essential for participation in the markets.[22] The goal was to ensure that the "the public [has] access to a highly reliable source of information that is fully consolidated from all the various market centers that trade a particular security."[23]

Under this "national market system," the Plan Participants (the exchanges and NASD, now FINRA) were required to act jointly to provide this data. Those Plan Participants operate through three equity data plans, which oversee the operation of the SIPs, which themselves provide the public market data stream. Today, the SIPs "disseminate[] and calculate[] critical regulatory information including the National Best Bid and Offer (NBBO), and Limit Up Limit Down (LULD) price bands among other important regulatory information such as short sale restrictions, and regulatory halts."[24]

What are the SIPs Used For Today?

The Commission has expressly acknowledged that one of its "most important responsibilities is to preserve the integrity and affordability of the consolidated data stream."[25] While the Commission has previously declared that consolidated real-time dissemination of information is "the principal tool for enhancing the transparency of the buying and selling interest in a security, for addressing the fragmentation of buying and selling interest among different market centers, and for facilitating the best execution of customers' orders by their broker-dealers,"[26] that's not close to what the data provided through the SIPs are doing now.

As the Commission is well aware, the reasons are two-fold.[27] First, the data provided by the SIPs is facially inadequate. Modern market participants often use depth-of-book information, odd-lot orders, and auction information, for example, and that information is typically included in the exchanges' proprietary data feeds.[28] Second, the data provided

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[21] 15 U.S.C. 78k-1(c)(1)(B).
[22] *See, e.g.*, Proposed Order, at A-4 (citing *Regulation NMS*, Sec, and Exch. Comm'n, 70 Fed. Reg, 37496, 37560 (June 29, 2005)).
[23] See, 1999 Concept Release, 64 Fed. Reg. at 70615.
[24] Unlisted Trading Privileges Plan, *available at* http://utpplan.com/.
[25] *Regulation NMS*, Sec, and Exch. Comm'n, 70 Fed. Reg, 37496, 37503 (June 29, 2005).
[26] 1999 Concept Release.
[27] See, e.g., Market Data Infrastructure, at 25 (stating that market participants had explained to the Trading and Market staff that "In their view, they need the more content-rich proprietary data feeds and low latency connectivity to provide best execution to their clients and to competitively participate in the markets.").
[28] *Market Data Infrastructure*, at 24 (stating that "proprietary [] products typically include odd-lot quotations; orders at prices above and below the best prices (i.e., depth of book data); and information about orders participating in auctions, including auction order imbalances."). We note that the Commission has separately -- and appropriately -- proposed including this information in the definition of "core data". Id. *See also*, *Remarks of Tyler Gellasch, Healthy Markets Association, before the Sec. and Exch. Comm'n Roundtable on Market Data Products, Market Access Services, and Their Associated*

by the SIPs arrives later in time than the information provided by the exchanges through their own proprietary data feeds.

Not surprisingly, investors,[29] brokers,[30] and a slew of other market participants and their advocates have all told the Commission that efficient trading demands the most timely and robust information -- and that the SIPs are inadequate for that purpose. Instead, many market participants principally rely directly or indirectly upon information provided by the exchanges' proprietary data feeds.

Trading venues themselves also fully recognize this reality. The exchanges use the proprietary data feeds -- including those of their competitors. In fact, in April 2014, after its then-CEO inaccurately explained that Direct Edge's two exchanges used proprietary data feeds to price trades, the company later corrected the remarks to explain that the exchanges "currently use the SIP but will be transitioning to direct feeds from all major exchanges in January 2015."[31] Now, all of the exchanges rely on proprietary data feeds. Similarly, all of the largest NMS Stock ATSs[32] use the exchanges' proprietary data feeds.[33]

While the SIPs are facially inadequate for investors' or brokers' trading strategies -- or for operating a competitive trading venue -- they nevertheless provide important information for both competitive and regulatory purposes.[34] As a result, market

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Fees, Transcript, at 245-246, Oct. 26, 2018, *available at* https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102618-transcript.pdf (questioning why the SIPs don't currently include this information).

[29] See, e.g., Remarks of Mehmet Kinak, T. Rowe Price, *before the Sec. and Exch. Comm'n Roundtable on Market Data Products, Market Access Services, and Their Associated Fees*, Transcript, at 65-66, Oct. 25, 2018, ("[i]f our brokers are not aligned in that manner to use the most direct, the fastest, the most robust feeds they can get their hands on, then we will trade with someone else.").

[30] See, e.g., Letter from Joe Wald, Clearpool, to Brent J. Fields, Sec. and Exch. Comm'n, Oct. 23, 2018, available at https://www.sec.gov/comments/4-729/4729-4555206-176185.pdf ("broker-dealers are compelled to purchase exchanges' proprietary data feeds, both to provide competitive execution services … and to meet our best execution obligations due to the content of the information contained in the proprietary data fees as well as the latency differences between them….").

[31] Scott Patterson, *BATS Forced to Correct Statements by President O'Brien on How Its Exchanges Work*, Wall St. J., Apr. 3, 2014, *available at* https://blogs.wsj.com/moneybeat/2014/04/03/bats-forced-to-correct-statements-by-president-obrien-on-how-its-exchanges-work/.

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[33] See Healthy Markets Association, *Member Report:* Initial Review of Forms ATS-N *Takeaways for Investors and Other Market Participants,* Jan. 2020. Notably, Item 23 of Form ATS-N requires NMS Stock ATSs to disclose their use of market data. Rule 304 of Regulation ATS. *See, e.g.*, UBS ATS, Form ATS-N, File No. 013-00069, Item 23, *available at* https://www.sec.gov/Archives/edgar/data/230611/000091412120000126/xslATS-N_X01/primary_doc.xml#partIIIitem23 ("All events that require market data use the direct feeds when possible, but may alternatively use the Securities Information Processor (SIP) when necessary.").

[34] In 1980, the Commission adopted the Vendor Display Rule, which requires any vendor or broker to provide the NBBO, including top of book size. 17 CFR § 242.603(c). The rule was created so that investors would not be provided misleading or narrow views of the best trading price of a security. The Vendor Display Rule effectively mandates that brokers become forced consumers of the SIP data feeds.

participants rely on both the public and private market data to stay competitive and fulfill their regulatory obligations.[35] The distinct costs and burdens on market participants of both are significant.

Why are the SIPs Consistently Inadequate?

There is no reasonable debate over whether SIPs are adequate for modern trading purposes: they aren't. The is, however, considerable debate over how to best make the SIPs adequate for modern trading purposes and to fulfill their original purpose. In our view, the Commission must address not only the substantive inadequacies of the SIPs (including the data content, timeliness, and cost), but also the fundamental reason why those inadequacies persist, which is that the exchanges who are in charge of the public data streams directly benefit from those inadequacies.

The exchanges are not incentivized to provide the most robust data set available through the SIPs when they would make more from selling the exact same data directly through their faster proprietary data products. Similarly, the exchanges are not incentivized to materially reduce or eliminate the latency between the SIP and the proprietary data products they separately sell.[36]

Generally speaking, a government official acting in her official capacity would face dismissal, and perhaps imprisonment, if she were to use her governmental position to directly further her financial interests. In fact, the Commission has consistently has officials be recused from not just cases they may have worked on, but also those of their spouses.[37] The potential abuse of governmental power is simply too great to permit. Yet, with the operation of the equity data plans, that is what the exchanges have been permitted to do for years.

As we all know, since the NMS Plan process was statutorily enshrined by the 1975 Amendments, the exchanges have become for-profit entities largely owned by third-party shareholders. Not surprisingly, the Proposed Order explains that the Commission is considering action because:

> the Commission believes that the current governance structure of the Equity Data Plans is inadequate to respond to these changes [including

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Meanwhile, the fees for the SIP feeds--despite their relative inferiority to the private market data feeds--are significant and rising.

[35] Healthy Markets Association Market Data Report; see also *Remarks of Kevin Cronin, Invesco, before the Sec. and Exch. Comm'n Roundtable on Market Data Products, Market Access Services, and Their Associated Fees*, Transcript, at 102, Oct. 26, 2018, *available at* https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102618-transcript.pdf .

[36] Proposed Order, at A-34, n.128

[37] *See, e.g.*, Peter Eavis and Ben Protess, *She Runs S.E.C. He's a Lawyer. Recusals and Headaches Ensue*, N.Y. Times, Feb. 24, 2015, *available at* https://www.nytimes.com/2015/02/24/business/dealbook/sec-hamstrung-by-its-leaders-legal-ties.html (explaining how former SEC Chair Mary Jo White was recused from matters involving her husband).

> the conversion of exchanges to for-profit entities] or to the evolving needs of investors and other market participants.[38]
>
> [and that]
>
> under the current governance structure of the Equity Data Plans, improvements to the SIPs to adequately address important product, performance and pricing differentials between the SIPs and proprietary data products have not occurred.[39]

We completely agree.

Having for-profit exchanges in control of both the public and private market data streams is the fundamental conflict of interest at the core of market data provision in the US.[40] Unless the Commission fixes the governance of the public data streams, the for-profit exchanges will subjugate the timeliness and content of the public market data streams (and public interest) for their own profits. Arguably, the exchanges may even feel compelled by their fiduciary duties to their shareholders to do that.[41]

Proposed Order

Overview

The Proposed Order, if adopted, would direct the exchanges and FINRA to propose a New Consolidated Data Plan[42] that would, amongst other things:

- Consolidate the three equity data plans into one;[43]
- Reduce voting powers of exchanges with multiple venues, so that all exchange families would have, at most, two votes (as opposed to one vote per medallion);[44]

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[38] Proposed Order, at A-8.
[39] Proposed Order, at A-9-A-10.
[40] *See, e.g.*, *Remarks of Kevin Cronin, Invesco, before the Sec. and Exch. Comm'n Roundtable on Market Data Products, Market Access Services, and Their Associated Fees*, Transcript, at 102, Oct. 26, 2018, *available at* https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102618-transcript.pdf ("The conflicts of a structure where you have exchanges, incumbent exchanges offering a competing data product with the public data product is fraught with conflict.").
[41] Statement of Hon. Robert J. Jackson, Jr., Jan. 8, 2020, *available at* https://www.sec.gov/news/public-statement/statement-jackson-open-meeting-2020-01-08 ("As today's release explains, America's stock markets are riven by a fundamental conflict of interest: exchanges both operate public data feeds and profit from selling superior private ones… *[I]t's a mistake to blame private enterprises for maximizing the profit opportunities the law gives them."*) (emphasis added).
[42] Proposed Order, at 1-2.
[43] Proposed Order, at A-10 (explaining that the plan would be to "replace[] the three Equity Data Plans to eliminate redundancies, inefficiencies, and duplicative costs.").
[44] Proposed Order, at A-33-A-34.

- Add voting powers to "Non-SRO Members", including at least one institutional investor (e.g., investment adviser), one retail broker, one predominantly institutional broker, one data vendor, one NMS stock issuer (i.e., a company), and a retail investor;[45]

- Provide SRO Members with two-thirds voting power over the plans at all times;[46] and

- Reduce the vote thresholds for action by the Plan to an "augmented majority", "except for the selection of Non-SRO Members and decisions to enter into an SRO-only executive session."[47]

Notably, while the Proposed Order offers details regarding whom could be appointed to oversee the public market data stream, it offers no details regarding whether, and under what circumstances, those on the committee would be prohibited from voting on matters--even if those matters directly impact their financial interests (or those of their affiliates).

If the Commission were to adopt the Proposed Order, the exchanges and FINRA would be directed to propose a New Consolidated Data Plan meeting the prescribed criteria within 90 days.[48]

Concerns with the Proposed Order's Dependence Upon Conflicted Exchanges

At root, the financial incentives of those in control of both the SIPs and the proprietary data products (the exchanges) are skewed so as to keep the SIPs materially inferior indefinitely. The text of the Proposed Order explicitly acknowledges this reality.[49]

Somewhat ironically, the Proposed Order would direct the deeply conflicted exchanges to propose a way to "solve" their conflicted governance over the public market data stream by diluting their own powers to maximize their profits. Even if the exchanges were willing to do that -- presumably in the name of the "public interest" or out of concern that the Commission could take action against them if they ignored the order -- the exchanges' shareholders would likely not be so understanding. The exchanges make a lot of money on market data -- both from the public market data streams and the

[45] Proposed Order, at A-47.
[46] Proposed Order, at A-50.
[47] Proposed Order, at A-72-A73.
[48] Proposed Order, at A-2.
[49] *See, e.g.*, Proposed Order, at A-24 ("[T]he Commission believes that, under the current governance structure of the Equity Data Plans, improvements to the SIPs to adequately address important product, performance and pricing differentials between the SIPs and proprietary data products have not occurred. This failure contributes to the divergence in the usefulness of core data provided by the SIPs for some market participants compared to the proprietary data feeds. The Commission also believes that addressing these governance issues is an important first step in responding to concerns about the consolidated data feed.").

proprietary data feeds.[50] Making the public market data stream materially more rich in content, timely, and cheaper could materially undermine both revenue streams.[51]

As the Commission considers the Proposed Order, we pose a few high-level questions, which we believe would need to be first addressed.

1. As a practical matter, why is the Commission confident that the exchanges would -- or even could -- be willing to file a New Consolidated Data Plan that would likely disenfranchise them or risk hundreds of millions or billions of dollars a year in their revenues?

2. Assuming that the exchanges and FINRA would operate in good faith to propose a New Consolidated Data Plan, what is the consequence if it is not offered within the 90 days called for by the order?

3. Assuming that the exchanges and FINRA are able to agree to a New Consolidated Data Plan, what if the plan doesn't meet all the requirements of the order?

Essentially, each of these questions boils down to whether and how the Commission can compel the exchanges to do something that they have very strong financial interests in not doing. The exchanges are likely to fight vigorously against the Proposed Order, and some of the substantive changes required by it. In fact, NYSE Group Inc. has already filed a detailed objection to the Proposed Order, stating its belief that "the Commission lacks the statutory authority to require some of the changes contained in the Proposed Order, and that the governance changes in the Proposed Order will not solve the problems the Commission has identified."[52]

The Commission should be prepared for the exchanges to slow-walk any potential New Consolidated Data Plan, offer a non-compliant proposal, or not offer a proposal at all.

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[50] It is not entirely clear how much the exchanges make in profits from either. While the Commission once publicly disclosed both the exchanges' costs and revenues in the provision of the public market data stream, that was two decades ago. In 1998, the revenues for Tapes A and B were $219.4 million, while the costs were approximately $23.5 million, Since then, the revenues generated by the tapes has increased somewhat, but the public has not been allowed to see any corresponding costs. We do, however, thank the equity data plans for recently beginning to provide revenues on a quarterly basis, which began for Q4 2017. Because of these disclosures, we now know, for example, that in the first three quarters of 2019, revenues from Tapes A and B were $194.5 million. Quarterly Revenue Disclosure Q3 2019, Consolidated Tape Association, available at https://www.ctaplan.com/publicdocs/Q3_2019_CTA_Quarterly_Revenue_Disclosure.pdf (last viewed Feb. 17, 2020). Unfortunately, there is no required detailed disclosures on proprietary data revenues or costs.

[51] As described in response to the Conflicts of Interest Proposal, we believe the exchanges should be compelled to provide detailed information regarding their costs and revenues of their proprietary data products, as well as how those may be impacted by decisions made in the governance of the public market data stream.

[52] Letter from Elizabeth King, NYSE Group, to Vanessa Countryman, Sec. and Exch. Comm'n, at 3, Feb. 5, 2020, *available at* https://www.sec.gov/comments/4-757/4757-6779249-208168.pdf.

And that is assuming the exchanges wouldn't seek to change some other parameters outside of the contours of the proposal, which could give rise to entirely new concerns.

For example, what happens if the SROs offer a New Consolidated Data Plan that meets some of the prescribed criteria, but doesn't include others. Presumably, the SEC could reject the New Consolidated Data Plan proposal, but then it would have to wait for the same SROs to make another try. How long will that take? What will that look like? What if that next attempt doesn't comply with the order or is otherwise deficient? Is the SEC going to bring an action in court or through its own administrative enforcement authorities to enforce its order? What would that look like? How long would that take?

These questions aren't mere hypotheticals. The Commission has very recent experiences in trying to force exchanges into taking actions that the exchanges don't want to take. After slow-walking the Consolidated Audit Trail Plan for years, the exchanges have since been out of compliance with their own CAT Plan for several years.[53] Over the past decade, Commission officials have been frustrated by the lack of progress, but we are still years away from having a useful CAT. And the Commission hasn't brought a legal action. Arguably, the CAT is much less of a direct financial threat to the exchanges than the public market data reforms contemplated by the Proposed Order and other SIP reforms. Similarly, the Commission's final rule to impose a controversial transaction fee pilot was met by a lawsuit from the dominant exchange families seeking to block the rule. That final rule has been delayed, and the transaction fee pilot is now in limbo, as the case is pending before the Court of Appeals for the DC Circuit.[54]

In fact, even the most basic, minimal, voluntary efforts by the exchanges to enhance transparency seem to be slow in coming to fruition. For example, in October 2018, while sitting on a stage in the auditorium of the SEC's offices, exchange representatives said that in an effort to promote transparency of how the committee functions, they would support webcasting the committee's general sessions and operating committee meetings. That hasn't happened.

Ultimately, if adopted, the Proposed Order would likely leave the Commission -- long after Chairman Clayton and Director Redfearn are gone -- stuck in a similar process as with the CAT. The agency would be left cajoling the exchanges into complying with an order that the exchanges are, as fiduciaries to their own shareholders, compelled to fight against. The Commission should never have put the exchanges in that irretrievably conflicted position for the CAT, and it shouldn't do that again now.

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[53] See generally, *Hearing on Implementation and Cybersecurity Protocols on the Consolidated Audit Trail Before the House Financial Services Committee, Subcommittee on Capital Markets, Securities and Investment*, 115 Cong. (2017), *available at* https://financialservices.house.gov/uploadedfiles/11.30.2017_tyler_gellasch_testimony.pdf (Testimony of Tyler Gellasch).

[54] *DC Cir. Presses SEC to Justify Exchange Fee Program*, Law 360, Oct. 11, 2019, *available at* https://www.law360.com/articles/1208402/dc-circ-presses-sec-to-justify-exchange-fee-program.

Concerns with the Proposed Order's Addition of Non-SRO Members

We have significant concerns with the substance of the Proposed Order, and particularly with its addition of Non-SRO Members.[55] The Proposed Order, if adopted, would simply add more conflicts of interest to an already conflicted public market data governance system. Setting aside the important question of whether the Commission has legal authority to add Non-SRO Members to the voting structure of the plans,[56] we will explore why adding Non-SRO Members to the public market data stream oversight is unlikely to result in the timely provision of essential market data at a reasonable cost, which is essentially the purpose of the SIPs.

In sum, we believe that:

- The addition of Non-SRO Members will not ensure that those members will be incentivized to promote the timely provision of essential market data at a reasonable cost through the public market data stream;
- The addition of Non-SRO Members will create create gridlock in plan oversight, or (alternatively) have no impact because the Non-SRO Members' voting powers would be made irrelevant; and
- The selection of Non-SRO Members is unlikely to yield reliably accurate representatives of the allotted classes of participants.

Non-SRO Members May Not Be Interested in Robust, Timely Provision of Market Data Via a Public Market Data Stream

We are deeply skeptical that simply adding representatives of other for-profit interest is likely to result in the optimal provision of essential market information. The Non-SRO Members may, very rationally, determine that the "best" way for them to vote for their self-interests (or those whom they are appointed to represent) is for a low-quality, low-cost SIP. Why? Because as long as the SIP is materially inferior to the proprietary data feeds, market participants will need to buy the prop feeds for competitive -- if not regulatory -- reasons. So why make everyone pay a lot for both, when the SIP isn't valuable to anyone other than the exchanges receiving the revenues?

Further, the Commission seems to have forgotten why Commission and Congressional action were necessary to create the consolidated tapes in the first place. It wasn't just that the exchanges didn't want them. It's also that certain larger market participants (who then were members of the mutual exchanges) also didn't necessarily want the

[55] We note that we have previously suggested that the process could be improved by adding voting powers to non-SRO members. As described below, we think this could limit the proliferation of fees and costs. However, we fear this would create significant risks, and is unlikely to lead to the timely provision of essential market information at a reasonable cost through the public market data stream.

[56] *See, e.g.*, Letter from Elizabeth King, NYSE Group, to Vanessa Countryman, Sec. and Exch. Comm'n, at 12, Feb. 5, 2020, *available at* https://www.sec.gov/comments/4-757/4757-6779249-208168.pdf.

public distribution of market information. Some market participants had an interest in not having trading information reported, or having incomplete or delayed public market data stream?

A half century later, that dynamic may still persist. A representative for a larger trading firm may rationally determine that a slower, less-detailed SIP could be beneficial for its business purposes. Again, this is not an empty hypothetical. In April 2018, the SEC's Fixed Income Market Structure Advisory Committee recommended that FINRA propose a pilot that would include delaying for 48 hours the dissemination of certain corporate bond trades by TRACE.[57] That recommendation, if adopted, would deliberately delay public dissemination of large trades--effectively removing information from the marketplace and creating risks and costs for investors.[58]

Some market participants will very likely feel similarly about equities trading related information that is or could be subject to inclusion in the SIP.[59] Thus, in our view, we would anticipate that some Non-SRO Members may not be incentivized to promote and protect the timely provision of essential market information at a reasonable cost--which is the point of having the SIPs in the first place.

Adding Non-SRO Members Will Create Deadlock, or Won't Work at All

Awarding voting rights to Non-SRO Members, including representatives of brokers, investors, may arguably slow or halt the rising complexity and costs of the public market data stream fees. And we understand that this may be the reason why some market participants and their trade groups have historically pressed the Commission to add asset managers and brokers to the Operating Committee.[60] But it might not.

According to the Proposed Order, only one-third of the voting power would rest with the Non-SRO Members. At the same time, the Commission is suggesting that the SROs reduce the required voting thresholds for the New Consolidated Data Plan. So the

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[57] *Recommendation for a Pilot Program to Study the Market Implications of Changing the Reporting Regime for Block-Size Trades in Corporate Bonds*, Fixed Income Market Structure Advisory Committee, Sec. and Exch. Comm'n, Apr. 9, 2018, *available at* https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-block-trade-recommendation.pdf.

[58] See generally, Letter from Tyler Gellasch, Healthy Markets Association, to Vanessa Countryman, Sec. and Exch. Comm'n, July 29, 2019, *available at* https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5879134-188731.pdf; see also Tyler Gellasch, Healthy Markets Association, to Vanessa Countryman, Sec. and Exch. Comm'n, Apr. 29, 2019, *available at* https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008-5423848-184599.pdf.

[59] For example, representatives of retail brokerages and some trading firms have historically expressed concerns with the potential inclusion of odd-lot orders in the SIPs. We do not speculate as to why. However, we note that we have previously expressed concerns regarding odd lot trading practices to the Commission. Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, Mar. 5, 2019, *available at* https://www.sec.gov/comments/4-729/4729-5020185-182987.pdf.

[60] *See, e.g.*, Letter from Melissa McGregor and Theodore Lazo, SIFMA, to Brent J. Fields, Sec. and Exch. Comm'n, at 4, Oct. 24, 2018, *available at* https://www.sifma.org/wp-content/uploads/2018/10/File-No.-4-729-SIFMA-Comments-on-Roundtable-on-Market-Data-and-Market-Access-October-24-2018-002.pdf.

Proposed Order, if adopted, would allow the exchanges to come back with a Plan to add voting interests for representatives of other, for-profit entities with financial stakes in the outcomes, but then disenfranchise those new voters before they even join a meeting. That net result would likely mean that market participants and their allies who are hoping to stop the fee increases or self-serving by the exchanges are likely out of luck.

But even if voting concern is fixed (such as by requiring a majority of Non-SRO Members to approve an action), then we would run into another problem: Gridlock. Put simply, if the voting members are deadlocked on fees, wouldn't the votes likely be deadlocked on pretty much everything? When and under what circumstances would a majority of Non-SRO Members agree with SRO Members to materially change the New Consolidated Data Plan? As described more fully below, we don't see many areas of likely agreement, and there may also be areas wherein there is agreement -- but that agreement may be in a direction that is contrary to the timely provision of essential market data at a reasonable cost through the public market data stream.

The Selection Process and Requirements of Non-SRO Members is Inadequate to Lead to Reliably Accurate Representation of the Allotted Interests

There are also concerns over who those Non-SRO Members would be, and how they might actually vote. Each of those Non-SRO Members would initially be picked by the existing Advisory Committee members, with subsequent changes made thereafter pursuant to a "fair and transparent nomination process."[61] However, the actual people "may not be affiliated with an SRO, a broker-dealer, or an institutional investor."[62]

In reality, this means that the person would have to be someone like a friendly academic, former employee, or other person who could "arguably" represent that interest. Who's to say whether a particular academic, for example, really would represent the interests of all "institutional investors"? We do not see any reasonable way for the Commission to ensure that the "representative" adequately and fairly represents the views of the entities for whom she is appointed to represent. We know of people who have been blocked from the Advisory Committee because they were viewed as too "anti-exchange." What's to prevent that from happening here? The rudimentary sketch of the nomination process outlined by the Commission in the Proposed Order is facially inadequate to address these concerns with the selection of Non-SRO Members. Simply declaring a process "fair and transparent" does not make the results sufficient to uphold the public interest that the Commission is charged to protect.

[61] Proposed Order, at A-72.
[62] Proposed Order, at A-71-A-72.

Concerns with the Proposed Order's Failure to Require Recusals of Materially Conflicted Members

The Proposed Order goes into significant detail regarding the composition of the committee that would be allotted votes for deciding matters involving the public market data stream. However, perhaps because it was simultaneously released with the Conflicts of Interest Proposal, the Proposed Order does not address when, and under what circumstances, members of the committee should appropriately be precluded from voting on a given matter. The Commission should not assume that all members of a committee should be permitted to vote on all matters.

Alternative to Proposed Order

Ultimately, the Proposed Order uses an overly elaborate and conflicted process to potentially implement piecemeal changes that will not fix the fundamental conflict of interest at the heart of the SIP governance. For-profit entities should not be charged with establishing the rules and costs for a system that directly impact their (and their affiliates') bottom lines, nor can they be reasonably expected to ensure that the public has timely provision of essential market data at a reasonable cost.

In contrast to the Proposed Order, the Commission could directly address concerns regarding SIP complexity and costs by just continuing to exercise its regulatory authority to (1) ensure SIP filings meet the standards outlined in the Exchange Act and Commission Rules[63] and (2) rescinding the ability of the NMS Plans to make certain filings "effective upon filing."[64]

Next, as described in greater detail below (under the section in response to the Conflicts of Interest Proposal), we urge the Commission to ensure that any committee empowered to vote on matters related to the SIP -- however constituted -- has detailed recusal requirements that, at a minimum, preclude a committee member from voting on any matter that directly impacts its costs or revenues, or those of its affiliates. This should apply to not only fees, but also for technical modifications that may make the public market data stream more or less competitive, as compared to other services offered by the member or its affiliates.

Lastly, beyond these easy-to-implement reforms, the Commission should utilize its authority to directly consolidate the SIPs, establish what must be contained in the SIPs

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[63] We acknowledge the Commission's recent actions to increasingly hold the exchanges' filings to these standards. *See, e.g., Order of Summary Abrogation of the Twenty-Third Charges Amendment to the Second Restatement of the CTA Plan and the Fourteenth Charges Amendment to the Restated CQ Plan*, Sec. and Exch. Comm'n, Exch. Act Rel. No. 34-83148, May 1, 2018, *available at* https://www.sec.gov/rules/sro/nms/2018/34-83148.pdf (citing to objections from Healthy Markets Association).

[64] Letter from Tyler Gellasch, Healthy Markets Association, to Vanessa Countryman, Sec. and Exch. Comm'n, Dec. 12, 2019, *available at* https://www.sec.gov/comments/s7-15-19/s71519-6540703-200569.pdf.

(including odd-lots, depth of book info, and auctions), and ensure that the SIPs are no longer at a temporal disadvantage to the separate proprietary data feeds of the exchanges.[65] It should directly enable competition, by ensuring that exchange affiliates have no cost, timing, content or other structural advantages over third parties. The Commission should exercise its authority to directly assume control over the equity data plans, and appoint the SROs to as an advisory committee for the provision of the public market data stream. Revenues should be to exclusively cover costs of data provision. Lastly, if the Commission believes that Congress would need to tweak the 1975 Act Amendments in order to effectuate it's vision, it should share that view with Congress.

The public market data streams are facially inadequate and don't serve their intended purposes. While we appreciate the intent of the Proposed Order, it simply doesn't do enough, and in our view further entrenches the deeply flawed system for years to come.

Conflicts of Interest Proposal

Overview

The Conflicts of Interest Proposal, which was first submitted to the Commission on July 5, 2019,[66] would effectively codify a voluntary disclosure regime in which

> the Participants, the Processor, the Administrator, and the members of the Advisory Committee (collectively, the "Disclosing Parties") provide responses to a set of questions designed to provide transparency regarding potential conflicts of interest of such parties. Each of the Disclosing Parties' responses are then made publicly available on the Plans' website.[67]

The Proposed Disclosures Do Not Apply to All Relevant Parties

The Conflicts of Interest Proposal should apply broadly, so as to clearly capture not just a single legal entitty, but to all legal entities within a common ownership structure. For example, material Conflicts of Interest policies and disclosures should clearly encapsulate all affilated entities. This is particularly critical, given recent efforts by some

[65] Notably, we understand that the Commission has already proposed significant reforms in this regard. *Market Data Infrastructure*, Sec. and Exch. Comm'n, Exch. Act Rel. No. 34-88216, Feb. 14, 2020, *available at* https://www.sec.gov/rules/proposed/2020/34-88216.pdf.
[66] Conflicts of Interest Proposal, at 1.
[67] Conflicts of Interest Proposal, at 2.

to assert that certain actions by affiliates of the exchanges may somehow be outside the scope of the exchange's operations.[68]

The Proposed Disclosures are Inadequate, and Recusals Should be Required In Certain Circumstances

Some conflicts of interest are simply too direct to permit, even with disclosure. For example, a judge would never be permitted to oversee a case involving his own divorce, or that of his child. A recusal is the only appropriate step. Similarly, a regulator or other public decision-maker should never be permitted to make a decision that directly, materially impacts her financial interests, or those for whom she has a close relationship. For example, a former Commission Chair was not permitted to vote on the outcomes of enforcement cases involving her spouse.[69] Similarly, the Commission would never permit an official at the agency to decide to award a major government contract his or her spouse.

Yet that is precisely what the Commission has permitted for decades in the oversight of the public market data stream. The now mostly for-profit self-regulatory organizations are permitted to set the fees and the rules for the public market data stream, with the economic consequences flowing directly back to them and their affiliates.

Officials from leading exchange families should never be permitted to vote on and effectively decide matters that directly impact their bottom lines or those of their affiliates. Accordingly, irrespective of whether and to what extent the Commission may revise the membership of the Operating Committee, we urge the Commission to insist that members who have a direct financial interest in the outcome of any decision, or who have an affiliate that is directly impacted, be recused from voting on the matter. This should apply to not only fees, but also for modifications that may make the public market data stream more or less competitive, as compared to other services offered by the member or its affiliates.

If the Commission deems it in the public interest, the Commission may consider using its exemptive authority to permit a member, upon request, to vote on a matter despite an actual or perceived conflict of interest, provided that the member has first established that the conflict is *de minimis*. However, in establishing this *de minimis* conflict of interest, the member should be required to make all necessary disclosures needed by the Commission to assess the magnitude of the conflict, including a quantification of the anticipated impact on the member and its affiliates.

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[68] *See, e.g.*, *Notice of Filing of Proposed Rule Change to Establish a Schedule of Wireless Connectivity Fees and Charges with Wireless Connections*, Sec. and Exch. Comm'n, Exch. Act Rel. 34-88168, Feb. 11, 2020, *available at* https://www.sec.gov/rules/sro/nyse/2020/34-88168.pdf.

[69] *See, e.g.*, Peter Eavis and Ben Protess, *She Runs S.E.C. He's a Lawyer. Recusals and Headaches Ensue*, N.Y. Times, Feb. 24, 2015, *available at* https://www.nytimes.com/2015/02/24/business/dealbook/sec-hamstrung-by-its-leaders-legal-ties.html.

We recognize that the imposition of this basic level of integrity may result in having only a small number or zero permitted voting parties on a particular matter. The Commission should not let the reality that the exchanges are so conflicted in the process deter it from imposing basic conflicts of interest protections. To that end, the Commission should establish provisions to enable the Commission to directly decide matters for which there is an insufficient number unconflicted committee members to enable proper committee consideration, for example, if more than half of the committee is recused.

These reforms are essential to protecting market participants and the public interest from the abuse of exchanges' governmental roles in overseeing the public market data streams.

The Proposed Disclosures are Inadequate and Should be Supplemented

Conceptually, the idea of having private parties tasked with overseeing or offering input to those overseeing an essential public utility -- like the provision of public market data -- disclose details about their actual or potential conflicts of interest could be valuable. However, that of course depends on the details being disclosed.

We find none of the information provided by the proposed conflicts of interest policies to be informative or materially valuable in assessing the incentives of the various market participants. It is all essentially information we already know, or have a very strong understanding of. For example, we know that NYSE is a for-profit entity. We know that they sell proprietary data products. These are not particularly meaningful disclosures.

The exchanges, for example, would be required to answer three basic questions:

- Is the Participant's firm for profit or not-for-profit? If the Participant's firm is for profit, is it publicly or privately owned? If privately owned, list any owner with an interest of 5% or more of the Participant, where to the Participant's knowledge, such owner, or any affiliate controlling, controlled by, or under common control with the owner, subscribes, directly or through a third-party vendor, to SIP and/or exchange Proprietary Market Data products.

- Does the Participant firm offer real-time proprietary equity market data that is filed with the SEC ("Proprietary Market Data")? If yes, does the firm charge a fee for such offerings?

- Provide the names of the representative and any alternative representatives designated by the Participant who are authorized under the Plans to vote on behalf of the Participant. Also provide a narrative description of the

> representatives' roles within the Participant organization, including the title of each individual as well as any direct responsibilities related to the development, dissemination, sales, or marketing of the Participant's Proprietary Market Data, and the nature of those responsibilities.[70]

The extremely basic questions to which the Conflicts of Interest Proposal would require disclosure -- even if answered -- would generally provide no new information with which to assess the actual or perceived conflicts of interest.

The required disclosures fail to identify many of the potential conflicts of interest inherent in the system, and utterly fail to quantify the magnitude of firms' conflicts of interest, financial incentives, and other relationships. But, perhaps at the most basic level, they generally don't provide the public with any information we didn't already know.

If the Commission or the public were interested in identifying all potential conflicts of interest, quantifying them, and mitigating them, this disclosure document would have dozens of questions per "Disclosing Party." Until the Commission finalizes reforms to the SIP governance, we urge the Commission to deny the Conflicts of Interest Proposal, or expand it dramatically, to include such information as might actually help the Commission and third parties quantify and assess the Disclosing Parties' conflicts of interest. For example, this would include, at a minimum, a disclosure by each exchange of its costs in producing SIP data, the revenues from the SIP data, costs in producing competing proprietary data products, revenues from the competing data products, analyses of the extent of the customer overlap of those products, details regarding the projected impact of improving the content and timeliness of the SIPs on those competing data products, and more.

Further, the enhanced disclosures should not just focus on the Plan Participants. Any other engaged parties (including the Plan Processor and Advisory Committee), in addition to the generally minimalist disclosures outlined, should also have to disclose any personal, organizational, or financial relationships in excess of some dollar threshold with any plan participant or other Disclosing Party. In the absence of any more information regarding financial relationships, we recommend that the threshold be set at $1 million per year in revenues or any ownership stake whatsoever. Similarly, they should be forced to disclose any interest they may have in the timely and complete reporting of market data. They should also be compelled to disclose whether they purchase market data products and other services from other Disclosing Parties.

No matter what the disclosures, however, that will not meaningfully address the conflicts of interest of the Disclosing Parties. At root, for-profit market participants have effective control over essential market data. Currently, neither the Commission nor other market participants have any power to change their behavior based on anything disclosed.

[70] Conflicts of Interest Proposal, at 5-6.

There is no recourse. Disclosure is only a valuable tool if it can drive changes in behavior. Under the current governance regime, it can't. Thus, the only material value in disclosures by the Disclosing Parties would be to inform recusals and motivate eventual regulatory changes to fix the deeply flawed SIP governance. The Conflicts of Interest Proposal doesn't currently provide sufficient relevant information for either objective. We urge the Commission to reject the proposal, and to instead compel the disclosure of all actual and potential conflicts of interest by the Disclosing Parties, including such information as would help the Commission and the public quantify the magnitudes of the conflicts.

Confidentiality Proposal

The Confidentiality Proposal, which was first submitted to the Commission on July 5, 2019.[71] According to the Confidentiality Proposal, it is intended to:

> (i) protect against any potential misuse of confidential information, which includes, but is not limited to, protecting confidential information obtained or generated by the Administrator and Processor in connection with the operation of the Plans as well as (ii) to allow the Operating Committee to disclose confidential information to the Advisory Committee to obtain its input without concern that such confidential information may be shared beyond the Advisory Committee.[72]

The exchanges and FINRA, as effectively in control of the market data plans, have incredible access to commercially valuable information.

As the Commission noted in its Proposed Order,

> [i]n the operation of the Equity Data Plans, Participants and Participant representatives have been privy to confidential and proprietary information of substantial commercial or competitive value, including, among other things, information about core data usage, the [securities information processors' or] SIPs' customer lists, financial information, and subscriber audit results. However, the terms of the Equity Data Plans do not address commercial use of confidential or proprietary information by the Participants.[73]

[71] Confidentiality Proposal, at 1.
[72] Confidentiality Proposal, at 2.
[73] Proposed Order, at A-67.

The oversight of the public market data stream is a public, governmental function. Confidential information obtained during their performance of this governmental function should not be misused, and the penalties for doing so should be severe.

Unfortunately, we are aware of numerous instances where confidential information obtained by exchanges pursuant to their "oversight" of the public market data stream appears to have been mis-used. For example, sales personnel of an affiliate of an exchange (that offers data products) have contacted customers of a third-party data distributor shortly after that data distributor provided those names to the affiliate in response to a request to authorize the data distribution. The affiliate was seeking to directly sell the customer competing products to the data distributor. We are aware of similar instances following an "audit" of a third-party data distributor. This should never happen.

The currently effective "Executive Session Policy" prohibits the exchanges and FINRA from sharing key information across a wide swath of areas with the Advisory Committee members. And even sharing with the handful of already connected Advisory Committee members is much less than sharing with the public. Merely disclosing more information to the Advisory Committee members is not a substitute for robust public disclosures or oversight. We fear that this Confidentiality Proposal may be used to continue to inappropriately shield important information from the public.

None of the information obtained by any of the interest parties tasked with overseeing or performing services regarding the public market data stream should be permitted to be mis-used by anyone engaged in the process, and so a robust Confidentiality Policy is essential. The Confidentiality Proposal creates three tiers of information and then ascribes a different set of procedures for handling each type of information.[74] Essentially, the Confidentiality Proposal develops an elaborate apparatus in an attempt to guard against the obvious risks -- that the firms in charge of the performance of a governmental function have significant financial stakes in it. It won't work.

At the same time, we worry that the proposed Confidentiality Proposal could be mis-used as a sword by the exchanges to further shroud the governance and operations of this important government function. The public deserves to know how much profits the exchanges make on performing this governmental function (which we believe they should not be tasked with running). Put simply, the public deserves to know information that is currently non-public about the costs and operations of this public service.

Accordingly, we urge the Commission to reject the Confidentiality Proposal as inadequate. At the same time, the Commission should take steps to ensure the public disclosure of significantly greater information regarding the costs and operations of the public market data streams.

[74] Confidentiality Proposal, at 6-7.

Conclusion

Thank you for your consideration. Should you have any questions or would like to discuss these matters further, please contact me at [redacted].

Sincerely,

Tyler Gellasch
Executive Director

Cc:

The Honorable W. Jay Clayton, Chairman
The Honorable Hester M. Peirce,Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison H. Lee, Commissioner
Brett Redfearn, Director, Division of Trading and Markets